K

Exhibit

File No. S. DWR. 2/1

Legal **DEPARTMENT**

A. **BRANCH**

P. 62 (K) (c)

Subject:—

Suits - Dharwar

In the court of the Civil Judge
(Senior Division) Dharwar.

C. S. No. 337 of 1944.

Hanamantgouda Ayyangouda
Hiregoudra and 5 other — Pltff.

Vs.

The Province of Bombay — Defts.

Claim Rs.

File No. S. DWR 2/46.

Std. Secrt. Slip 24-B

S. DWR. 21

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1.	Printed L. D. G-R. No 7375 A 6-10-45	Sanctioning the defence of the suit	5
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Dharwar Civil Suit No. 337 of 1944.

The suit is for a declaration of the plaintiffs' title over a peice of land admeasuring 5 acres 17 gunthas newly formed out of the bed of a rivulet called Benni Nalla in the village of Magnur, and for possession of the same. The plaintiffs who are the owners of a riparian land Revision S. No. 4 allege that the new land is an alluvial accretion to their S. No. 4 caused by slow, gradual, imperceptible deposit of soil and that therefore they have a right to it as riparian owners. The revenue authorities did not accept this view. They found that the new accretion was not a gradual imperceptible deposit of soil as alleged by the plaintiffs but was actually the abandoned bed of the Nalla caused by the diversion of the course of the Nalla. They also thought that the plaintiffs as riparian owners could not get any right of pre-emption under section 63 of the Land Revenue Code which applied only in the case of a gradual, imperceptible alluvial accretion. The new land was therefore sold by public auction to one Dyamangouda who had given the highest bid of Rs. 500 . Before the sale was confirmed, the plaintiffs had offered to purchase it under section 63 at a price equal to three times its annual assessment but the Prant Officer did not consider that offer. Having failed in the appeals before the Collector and the Revenue Tribunal the plaintiffs have filed a suit ~~in which they claim~~ for a declaration of ownership and possession.

The claim of ownership is not tenable. If the suit land is not an alluvial accretion but an abandoned bed of the Nalla caused by a receding of the stream it vests in the Crown notwithstanding the fact that it is in ~~ambiguity~~ contiguity with the plaintiffs' land. Even assuming that the abandoned bed is an alluvial accretion, it would, being a bed of a Nalla, vest in the Government under section 37 of the Code and can be disposed of under section 63. The suit as framed is therefore not

intainable.

Sanction may be accorded to the defence on the lines of the appended brief. The draft written statement is for approval.

RM 19/9/45

A.A.L.R RK 26/9.

R.L.A Rmr 1/10/45

Secy R.D. 3.10.45

Secy R.S.

Most of the record being in Kannada language which I cannot read I had to rely on facts and the marginal references in the brief or the report underside which prepared by the L.S.P. Sharma. RK

(I have gone through the record. facts are correctly stated in C.S.A. & brief) RK

Sem. Ph Imm to R I & 31.10

xNo. 2279 ✓

d-3-10-45

In the Court of the Civil Judge, Senior Division, Dharwar.

Civil Suit No. 337 of 1944. 45

Hanamantgouda Ayyangouda Hiregoudra
and 5 others. ..... Plaintiffs.

Versus

The Province of Bombay. ..... Defendants.

Written statement of the abovenamed defendant is as follows :-

1. The plaintiff's claim is untrue and is denied.

2. The allegations in paragraphs 2, 4 and 6 of the plaint that the formation of the land in suit is by alluvial accretion and by gradual process of the change of the Nala course are denied.

3. The defendant submits that the land in suit is formed out of the bed of the Benni Nala and thus it vests in Government under section 37 of the Bombay Land Revenue Code. The Government is the owner of it.

4. The defendant denies that plaintiffs have obtained any title to the land in suit either by virtue of long possession or otherwise.

5. The land in suit being part of the bed of the Benni Nala, the provisions of sections 63 and 64 of the Bombay Land Revenue Code are not applicable to the case.

6. The land in suit which was found to be a bed of ~~held on~~ the Nala was ordered to be made in to a new survey No. and sold by public auction. Accordingly, the suit land was sold at a public auction on 18.7.1941 and ~~defendant No. 2~~ Lingarangouda Basangouda purchased the same for Rs. 500/- and the said sale was confirmed on 4.8.1941. The sale is valid and legal and cannot be questioned by the plaintiffs who have no title to it. The said Lingarangouda is a necessary party to the suit.

7. The plaintiffs whowere in wrongful possession of the suit land were rightly dispossessed ...

defendant and the plaintiffs are not entitled to the possession thereof.

8. The orders of the Assistant Collector upheld in appeal by the Collector and the Bombay Revenue Tribunal are legal, intra vires, valid and binding on plaintiffs. The allegations to the contrary in the plaint are denied.

9. The plaintiffs are not entitled to the reliefs of declaration and possession sought for.

10. It is submitted, therefore, that the plaintiff's suit should be dismissed with costs.

District Government Pleader, Dharwar.

I, , District Government Pleader, Dharwar, do hereby declare that what is stated in paragraphs 1 to 10 above is true according to the information received and believed to be true. This verification is made at on the day of 1945.

District Government Pleader, Dharwar.

47

Suits :

Dharwar.

For a declaration of the plaintiffs' title to a piece of land admeasuring 5 acres 17 gunthas newly formed out of the bed of a rivulet called Benni Nalla and lying between Revision Survey Nos. 3 and 4 of the village of Mugnur.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 7375-A.

Bombay Castle, 6th October 1945.

Letter from the Collector of Dharwar, No. L.A.W. 452, dated the 6th July 1945—Forwarding papers in the suit noted in the margin ; and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), DHARWAR.

Civil Suit No. 337 of 1944.

Hanamantgouda Ayyangouda Hiregoudra and 5 others .. Plaintiffs ;

versus

The Province of Bombay .. .. .. Defendant.

Claim—Rs.

Endorsement by the Commissioner, Southern Division, No. L.S.T. 346, dated the 30th July 1945—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Dharwar, No. 7375, dated the 6th October 1945—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

Original

P. N. MOOS,
Secretary to Government.

G. R., No. 7375-A, L. D., dated the 6th October 1945.

Issued
AF
6/4

To

* The Revenue Department,
* The Commissioner, Southern Division,
* The Collector of Dharwar,
* The Secretary, Bombay Revenue Tribunal,
The District Government Pleader, Dharwar (with two copies of the brief).

* With a copy of the brief.

No. of 1945.

Copy forwarded for information and guidance to.

Sent after issue
file in S. Dharwar/46
Dm
10/4
AS. P
12/4/46

DHARWAR CIVIL SUIT NO. 337 OF 1944.

Chronological Statement of Facts.

The plaintiffs sue for a declaration of their title to a piece of land admeasuring 5 acres 17 gunthas newly formed out of the bed of a rivulet called Benni Nalla and lying between Revision Survey Nos. 3 and 4 of the village of Mugnur. The plaintiffs also pray for possession of the land and mesne profits in respect thereof.

p. 1 of file I. 2. The newly formed land shaded red in the sketch dated 27th November 1940 has been given a new Survey No. 122 measuring 5 acres 17 gunthas assessed at Rs. 12 9-0. The plaintiffs' claim ownership over this land on the ground that it is an alluvial accretion to their land Revision Survey No. 5 to the South of it. Revision Survey No. 4 is 1 acre 24 gunthas in area and is owned by the family of the plaintiffs.

p. 33 do. 3. On 4th October 1939, the village officers of Mugnur reported to the Mahalkari of Nargund that Revision Survey No. 3 had been washed away and new land had been formed by accretion adjoining Revision Survey No. 4.

p. 35 do. 4. On 7th January 1940, the five plaintiffs and another person gave a statement before the Circle Inspector that as the newly formed land did not form part of any survey number they were willing to purchase it for occupancy price settled by the *punch*.

p. 37 do. 5. On 15th January 1940, the Circle Inspector reported to the Mahalkari that as a result of Revision Survey No. 3 having been washed away there had been an accretion to Revision Survey No. 4. He recommended that the District Inspector of Land Records should be asked to measure the

p. 38 do. portion of Revision Survey No. 3 that had been washed away and the new land. On 22nd February 1940 the Mahalkari forwarded the papers to the District Inspector of Land Records for measurements.

pp. 41–43 do. 6. On 20th November 1940, the District Inspector of Land Records submitted a report that as a result of a diversion in the course of the Nalla there had been an accretion to Revision Survey No. 4 as shown below :—

Survey No.	Hissa No.	Area of accretion. A.	g.
4	1	0	31
	2	0	32
	3	0	17
	4	0	19
	5	0	24
	6	1	4
	7	1	10
		5	17

As regards Revision Survey No. 3 it was reported that an area of about 7 acres and 14 gunthas had been washed away and that its owner had requested for a grant of the newly formed land. The District Inspector of Land Records however recommended that the land should be given a new survey number and sold away by public auction.

p. 44 do. 7. The Assistant Collector then invited proposals for the
pp. 45–46 do. disposal of the land. On 31st March 1941 the Circle Inspector reported that the *punch* valuation of the newly

formed land was Rs. 230; that the holders of Survey No. 4 (plaintiffs) were not willing to take the land opposite their respective sub-divisions on payment of occupancy price, but offered to pay only assessment and that the owner of Revision Survey No. 3 was willing to pay the occupancy price. The Circle Inspector recommended that the land should be given a new number and disposed of by public auction. On 16th April 1941, the Mahalkari recommended to the Prant Officer, III Division, that the Circle Inspector's proposals should be approved and the land should be sold by public auction with an upset price of Rs. 250. p. 53 of file I.

8. On 27th April 1941, the Prant Officer ordered that the suit land should be sold by public auction on an impartible tenure with an upset price of Rs. 300. Do. do.

9. On 7th August 1941, the Mahalkari reported to the Prant Officer that the sale had been held on 18th July 1941 as ordered by the latter and that the land was sold to one Dyamangouda Basangouda (owner of Revision Survey No. 3) who had given the highest bid of Rs. 500. The Mahalkari recommended confirmation of the sale. p. 54 do.

10. On 13th/14th August 1941, the Prant Officer confirmed the sale. By the same order he rejected the plaintiffs' request for grant to each of them of the portion of the new land in front of his respective sub-division of Revision Survey No. 4 on payment of annual assessment only. He further ordered as these persons had been cultivating the land for many years they should be evicted and action taken under section 61 of the Land Revenue Code for unauthorised use and occupation. p. 79 do.

11. On 14th August 1941, the plaintiffs applied to the Prant Officer stating that the new land was an alluvial accretion formed by the gradual deposit of silt, that the auction sale was illegal, and that since the area of accretion adjoining each sub-division of Survey No. 4 did not exceed one acre they were entitled to its use under section 64 of the Land Revenue Code and that in any event they were entitled to the land on payment of occupancy price equal to three times the annual assessment under section 63 of the Land Revenue Code. They therefore prayed that the auction sale should be set aside and the land granted to them on payment of occupancy price as aforesaid. The Prant Officer forwarded the papers to the Mahalkari for report. p. 119 do.

12. On 30th August 1941, the Mahalkari reported that the suit land was the abandoned bed of the Nalla and not alluvial accretion. On 7th September 1941, the Prant Officer directed that the orders passed on 14th August 1941 should be communicated to the plaintiffs. pp. 121–122 do. p. 123 do.

13. On 29th September 1941, all the plaintiffs except plaintiff No. 4 appealed to the Collector of Dharwar against the Prant Officer's orders. p. 131 do.

14. On 3rd December 1941, the Collector instructed the Prant Officer for giving his opinion, after visiting the site and taking further evidence if necessary, whether the new land was an abandoned bed of the Nalla caused by a sudden diversion of the stream or an alluvial accretion caused by the gradual deposit of silt as contended by the plaintiffs. p. 177 do.

15. On 7th March 1942, the Prant Officer after having personally inspected the site and taken further evidence, submitted a detailed report to the Collector stating that the new land was not an alluvial accretion caused by a gradual imperceptible deposit of fresh soil by the water of the Nalla but that it was only an abandoned bed of the Nalla. He also stated that there was no question of title by adverse possession and that the right of pre-emption under section 63 of the Land Revenue Code would arise only if the land was an alluvial accretion. p. 179 do.

p. 191 of file I.
p. 197 do.

16. On 2nd May 1942, the Collector dismissed the appeal. On 26th May 1942, Dyamangouda Basanagouda the auction purchaser was put in possession of the suit land.

17. On 25th May 1942 and 30th May 1942, the plaintiffs Nos. 1 and 2 respectively filed separate appeals before the Bombay Revenue Tribunal against the Collector's order. On 24th September 1943, the Tribunal dismissed both the appeals.

p. 1 of file II.

18. On 16th September 1944, the plaintiffs gave notice of suit under section 80 of the Civil Procedure Code and on 22nd November 1944 they filed the present suit in the Court of the Civil Judge (Senior Division), Dharwar.

Grounds of Defence.

The position of the suit land and the Nalla and Revision Survey Nos. 3 and 4 has been indicated in the sketch at page 1 of file I. The plaintiffs contend that the suit land was the result of alluvion by a gradual, slow and imperceptible accretion by deposit of fresh soil by water upon their riparian land Survey No. 4. They therefore claim that they are the owners of that land and as such entitled to possession of the land and to have the sale thereof set aside. The suit therefore involves a determination of only two important questions viz. (1) Whether the suit land is an alluvial accretion to Survey No. 4 as contended by the plaintiffs, (2) If it is not such an accretion whether the plaintiffs are entitled to a declaration of ownership and possession. Apart from the provisions of the Bombay Land Revenue Code the ordinary law of alluvion is that the riparian owner becomes also the owner of the land gained from a river or a stream by gradual accretion. Where tidal or non-tidal water recedes gradually and imperceptibly from the land, or land by alluvion or dereliction is added to the dry land or foreshore, it belongs to the owner of the dry land to which it is added. Where however the change is not slow and imperceptible but sudden, the principle of law above stated does not apply and no change occurs in the ownership of the land or the foreshore. (Halsbury : Laws of England, Volume 33, pages 522-524 and 563, Felix Lopez *v.* Maddan Thakoor (1870), 5 Bengal Law Reports, page 521 at page 525 ; Narendra *v.* Achhaibar, I. L. R. 28 All. 647). Stated shortly, if the accretion is gradual, slow and imperceptible, it belongs to the owner of the riparian land ; if on the other hand it is sudden, the riparian owner gets no title to it. This principle has also been recognised by the Bombay High Court in Nasarvanji Pestanji *v.* Nasarwanji Darasha, 2 Bom. H. C. R., page 345.

2. Now in the present case it is not proved that the new land measuring 5 acres and 17 gunthas is a slow, gradual and imperceptible accretion to the riparian land Revision Survey No. 4. On the contrary, the District Inspector of Land Records and the Prant Officer have found, for the reasons stated in their respective reports (*vide* Chronological Statement of Facts, paragraphs 6 and 15) that the suit land is not the result of such slow accretion but is an abandoned bed of the Nalla caused by a diversion of the stream. Under section 37(*1*) of the Bombay Land Revenue Code, the bed of a river, stream, nalla, etc., belongs to Government. If the bed is abandoned by the water of the river or the stream having diverted from the original course the new land so formed still vests in Government (*see* Gupte : Land Revenue Code, page 188, 2nd Edition). Moreover in their statement dated 7th January 1940 before the Circle Inspector (*vide* Chronological Statement of Facts, paragraph 4) the plaintiffs themselves have admitted that the new land had been formed out of the Nalla bed and did not form part of any survey number. They did not state then that the formation of the land was by gradual accretion by the deposit of fresh soil. Admittedly therefore the suit land is not an alluvial accretion as now contended by the plaintiffs but is the result of the diversion in the course of the stream. The riparian owners cannot therefore claim any right over the same. Moreover, the question of ownership apart, the plaintiffs cannot claim even the right of pre-emption under section 63 of the Code unless it is an alluvial accretion as explained above. The provisions of sections 63 and 64 of the Land Revenue Code are therefore not applicable to this suit.

3. The plaintiffs are therefore not entitled to any relief as regards declaration of title or possession.

4. As the suit is for possession of the new land it should be contended that the auction purchaser Dyamangouda who is in possession of it is a necessary party to the suit.

5. It should be urged that for these reasons the suit fails and must be dismissed with costs.

11 59

Suits.
Dharwar

For a declaration of the plaintiffs' title to a piece of land admeasuring 5 acres 17 gunthas newly formed out of the bed of a revulet called Benni Nalla and lying between Revision Survey Nos.3 and 4 of the village of Mugnur.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 7212
Bombay Castle, 21st October 1946.

Read Government Resolution No.7375 A, dated the 6th October 1945.

Letter from the Assistant Government Pleader, Sholapur No.1164, dated the 2nd October 1946 - stating that the suit noted in the margin was disposed of by the Civil Judge (Senior Division) Dharwar on the 30th September 1946 when the following order was passed:-

In the Court of the Civil Judge, (Senior Division), Dharwar.
Civil Suit No.337 of 1944.
Hanamantgouda Ayyangouda Hiregouda and 5 others
vs.
The Province of Bombay.
Claim Rs.

"Plaintiff No.1 the owner of S.No.4/1 should take possession of 31 guntas of the land adjoining his strip and as shown in the map Ex.54. Plaintiff 2 and defendent 8 owners of S.No.4/2 should get possession of 32 guntas of land close to their land. Plaintiff No.4 the owner of S.No.4/3 should get possession of 17 guntas of land adjoining his strip and plaintiff No.2 and plaintiff No.3 owners of S.No.4/4 should get possession of 19 guntas of land adjoiningtheir strip and plaintiff No.3 the owner of S.No.4/5 should get possession of 24 guntas of land situated close to his land. The claim regarding 2 acres 14 guntas of land situated in front of S.No. 4 pothissas 6 & 7 is not allowed. The parties shall bear own costs. An enquiry regarding mesne profits from date of suit till possession is obtained is ordered under 020 & 12(c) C.P.C."

Letter from the Collector of Dharwar No.L.A.W.452, dated the 8th October 1946 requesting Government to file an appeal against the decision of the Civil Judge (Senior Division) Dharwar.

RESOLUTION:- Sanction is accorded to the institution of a Civil Appeal in the Court of the District Judge, Dharwar, against the order of the Civil Judge, (Senior Division) Dharwar, dated the 30th September 1946 on the grounds contained in the brief accompanying Government Resolution, No.7375-A, dated the 6th October 1946.

By order of the Governer of Bombay,

Original
R.M.Mehta,
Assistant Secretary to Government.

Subtd. for signature.
18/X.
A.S.

Issued 21/10.

To

The Revenue Department.

The Commissioner, Southern Division,

The Collector of Dharwar.

The Secretary Bombay Revenue Tribunal.

The District Government Pleader, Dharwar.

Submitted after issue
Fate - 5 Days
Await judgment

Copy was applied for in person on the 1st October 1946.
It was ready for delivery on the 10th October 1946. Sd/ C.O.C

sd/
C.O.C

It was delvered on 21st day of October 1946.

sd/
C.O.C.

Received on 22-11-1944.
Registered on 25-11-1944.
Decided on 30-9-1946
Duration one year ten months and 6 days.

In the Court of the Civil Judge Senior Division,
at Dharwar. Ex. 83.

Civil Suit No. 337 of 1944.

1
1. Hanamanthgouda Ayangouda Hiregoudar, caste Ambigar, age 45, Occu at on Agricultureist, of Mugnoor, Petha Naregund.
2. Fakirgouda Sanna Shivangouda Hiregoudra, age 54, caste and Occupation Do of Do.
3. Ramangouda Karigouda Hiregodar age 30 caste and Occupation Do & Do.
4. Tayavva kom Hanamantgouda Sannamani age 25 Occupation house hold work Caste and residence Do.
5. Karigouda Fakirgouda Hiregouder, (Patil) Ambigar, age 30 agriculturist, of Do. . . . . Plaintiffs.

Against.

1. The Province of Bombay.
2. Devengouda Basangouda Wallangoudar, Lingayat, age 30, Agriculturist of Mugnoor Petha Naragund.
3. Yellappagouda, Ningangouda, Hiregoudar, caste ambigar, age 30, Agriculturist of Do . . . . . Defendants.

Claim Rs. 100/-

The Plffs. sue to recover 5 acres and 17 gunthas of land declaring that it is anx accretion and to declare that the order passed by the Revenue Tribunal is not binding on them to recover possession of the same from defendats 1 and 2; to get future mesne profits and costs. They state that between survey numbers 3 and 4 of Mugnoor there is the bed of the stream called Benninalla; that the bed of the stream was there for more than 100 years; that the stream was gradually washing away the land in S.No 3 and there was an accretion slowly towards survey No. 4; that a portion of Survey No.3 ifwashed away that the portion shown in red in the map produced is not given a survey number; that the acreage is about 5acres and 17 gunthas and it is not assessed; that havingregard to the lands in the vicinity the assessment would beabout 2 rupees per acre; that therefore the assessment of the land in dispute is 11 rupees; that the land is not mentioned in record of rights; that the land is an accretion formed gradually and without being perceived by the naked eye and it is accretion to survey No.4; that there are seven strips in survey No.4 and the suit land; that every one

of the strip in suit land is in possession of the owner of a strip in survey No.4; that the land close to survey No.4/1 which measures 31 gunthas belongs to plaintiff No.1 that close to survey No.4/2 measuring 32 gunthas to plaintiff No. 2; and defendant No.3 that close to survey No.4/3 measuring 17 gunthas to plaintiff No.4; that closeto survey No. 4/4 measuring 19 gunthas to plaintiff-2nd defendant No.3; that close to survey No. 4/5 measuring 24 guntnas to plaintiff No.2 that close to survey No. 4/6 measuring 1 acre and 4 gunthas to Plff. No.2, ~~that~~ and Deft. No.3; and that close to survey No. 4/7 measuring one acre and 10 gunthas to plaintiff No.2; that thus the entire acreage of accretionis 5 acres and 17 gunthas and is in possession of Plffs. and defendant No.3 as stated above, that this is close to survey No.4 that the revenue officers have ordered wrongly that the suit property is the old bed of the stream; that there was an auction sale by them and defendant 2 has purchased the property; that the plaintiffs informed the Collector, the Commissioner andthe Revenue Tribunal that the suit property was not the old bed of the river; that there was a summary and it was held against plaintiffs; that defendant No.2 took forcible possession of the suit property and other property which is close to the stream; that this was inspite of the objections raised by plaintiffs that therefore the suit is filed; that defendant No.3 is a sharer in survey No.4 and he is not willing to be a plaintiff and therefore, he is added as a defendant; that defendants 1 and 2 have got no right in the suit property, that defendant No1is the Government of Bombay; that the necessary notice is given.

2. Deft. No.1 states at Ex. 24 that the allegations in pareas. 2,4 & 6 of the plaint that the formation of the land in suit is by alluvial accretion and by gradual process of the change of the Nala course are denied; that the land in suit is formed out of the bed of the Benni Nala; that Government is therefore, the owner under section 37of the land Revenue Code; that the Government is the owner of it; that plaintiffs are not the owners of the suit property by virtue of long possession; that the land in suit is a part of the~~bed~~ of the Benni Nalla; the provisions of sections 63 and 64 of the Land Revenue Code do not apply to the facts of the case; that the land in suit was found to be a bed of the Nala and it was ordered to be made into a new survey Number and it was sold by public auction; that it wason 18-7-194 that defendant No2

that Deft. No. 2 purchased the same for Rs.500/-; that the sale was confirmed on 4-8-1941; that the sale is valid and legal and it cannot be questioned by the plaintiffs who have no title to it; that plaintiffs were in wrongful possession of the suit land and were rightly dispossessed by the Subordinates of the defendant No.1; that the plaintiffs are not entitled to the possession of the suit land; that the orders are legal, ultra vires, valid and binding on plaintiffs; that the suit be dismissed with costs. Defendant No.2 states at Ex. 19 that the suit is not in time under Article 141, 142 and 144 of the Indian Limitation Act; that there was no gradual accretion as alleged in the plaint; that there was nox gradual accretion without being perceived by any body; that it is not a fact that the suit land was divided into 7 shares by the shares in survey No. 4; that it is not a fact that a person in possession of one shre in survey No. 4 was in possession of that portion of suit land which was just close to that land; that htere were no wrongs orderd; that suit land is a portion of the Vennimalla; that this was because th re was a sudden change in the bed of the Nalla; that the Benninall suddenly gave up its old course and divided survey No.3 into two and is flowing in the new bed; that the District Inspector of Lnad Records has measured the land and has got prepared a map; that the report is correct; that defendant No. 1 was the owner of the suit property; that defendant No.1 had a right to alienate the suit property according to law; that on 18-7-1941 there was an auction sale and it was legal; that on 14-8-1941, the sale is confirmed; that defendant No.2 has become the owner of the suit property; that the land is the abandoned bed of the Nala and this was found at first by the Third Division Prant Officer, Dharwar; that there was a public auction sale; that the appeals fired by the Iaintiffs were disalloned; that the orders are binding on plaintiffs; that the suit is not tenable; that he does not admit the allegations made by plaintiffs regarding the land situated between the suit pro erty and the new bed of the Nala; that that land was shown as ABCD in the the enquiry by Revenue Officers and it is a portion of survey No.3 and it is inpossesion of the own rs of survey No. 3; that this is since long; that he has not dispossessed plaintiffs;

plaintiffs; that plaintiffs have got no noright, title, and interest in suit land and the site shown as ABCD. in the Revenue enquiry; that the notice given to defendant No.1 is not legal; that the xxx valuation of the property is properly made; that the court fee stamp paid is adequate to relief sought; that there is one stream called Yalavinhalla and it joins Benninalla near survey Nos. 3 &4; when x there are high floods; the water of the streams spreads in adjoining lands and the crops are washed away; that when there such floods, the Benninalla chaged its cource of late; that the suit be dismissed x with costs.

3. Deft. No. 3 states at Ex.20 that there was a gradial accretion as stated by plaintiffs; that every one of the sharers in survey No.4 is in possession of that strip in suit property whichis close to their land; that there was the accretion as plaintiffs made an effort for it by putting shrubs grass etc.; that plaintiffs were in possession of the suit property and they were removing the croops that there was no sudden change in the bed of the Nalla; that there was a gradual accretion in survey No. 4 and the land in survey N. 3 was being gradually washed away; that the land is ain a slope and and therefore there was a gradual accretion and there was no sudden change in the bed of the Nalla; that he admits the claim of the plaintiffs; that he was never unwilling to become a plaintiff; that he should be given a relief; that plaintiffs and deft. No.3 should be given the reliefs prayed for in the plaint.

4. On these pleadings the following issues are raised at Ex. 28 :

1. Do plaintiffs and defendant No.3 prove that theplaint land ws alluvial land as alleged in the plaint ?

If so are plaintiffs and defendantNo.3 entitled to the same under sections 63 and 64 of the Bombay Land Revenue Code?

3. What is the market value of the land in suit?

4. Has proper court fee stamp been paid by the plaintiffs ?

5. Whether plaintiffs and defendant No. 3 are entitled to the x possession sought?

6. Is the claim in time ?

7. What decree should be passed ?

Issue No. 4 was tried as preminary issue and it was found by the then Civil Judge that the market value of the land in suit was

was Rs. 500/- and he called upon the plaintiffs to pay the deficit court fee s amp. Accordingly, that deficite court fee stamp is paid by plaintiffs. He has also given a finding on issue No. 3. Therefore no findings on issues No. 3 & 4 are necesaary.

5. Answers: 1. Yes. 2. They are entitled to a portion of thesme as stated below. 3. & 4. Already decided. 5. they are entitled to possession of the property stated below. 6. Yes. 7. As given below.

Reasons.

6. Fakirgouda Ex. 43, Karigouda Ex. 44, Nagappa Ex. 50, and Yellappa Ex. 51 are examined ofor plaintiffs. The statements of Abdulwahid Ex. 52 and Laxman Ex. 53 are recorded for defendant No.1 and thosesof Ayyangouda Ex.77 and Mallangouda Ex. 78 for Deft. No.2 and defendant No.3 has adduced no oral evidence in the case.

7. Issue No. 6 This is suit filed by plaintiffs against Govee rnemnt and others for recovering possession of certain property The first order was passed by the Collector after the enquiry by the Prant Officer III Dn. Dharwar. Thereafter there were appeals filed by the plaintiffs and last appeal was decided on 24-9-1943 Ex. 65. Thereafter the plaintiffs gave a notice to defendant No.1 as required by law and then they have filed a suit on 22- 11 -1944 It is not stated for the contending defendants as to how the suit is in time. It is clear that the suit is within time as it is filed within one year and two months from the date of the last order as required by law. Therefore, I find that the suit is in time.

8. Issues No. 1,2,& 5 Survey No. 3 of Mugnoor Petha Naragund belonged to defendant No.2 and his bhaubhands. Survey No.4 belongs to plaintiffs and defendant No.3 and they have effected 7 strips therein and are seperatly in possession of the strips. In between these two survey Nos ,Benninalla was flowing on the east of survy No.3 ~~xxx~~ there is a small stream called Yalavinalla. The village mugnoor is at a short distance from survey No.3. Survey No.3 is also used as a burial ground by villagers. It is stated by plaitiffs that Benninalla was washing away portions of survey No.3 from year to year and that therewas a gradual accretion adjoining survey No.4 since a long time and that plaintiffs and defendant No.3 who are owners of various strips in survey No.4 were in possessim

new M. 200\- and be called upon and plaintiff to pay pro-rata
cost of the same. Accordingly, said default cost of the same
is paid by plaintiff. He and also owns an undivided 1/2
interest in said property. Defendant has possession of the
property and pays all taxes, assessments and charges. 3.
Plaintiff and defendant are husband and wife. 4. Plaintiff
is the owner in fee simple of the following described real
property situated in the County of Los Angeles, State of
California, to-wit:

Lot 8 of Tract No. 2 as per map recorded in Book 22 Page 173 of Maps, in the office of the County Recorder of said County.

5. That on or about the 15th day of June, 1927, plaintiff and defendant purchased said property from one Frank Gilbert and Mary Gilbert, husband and wife, and received a deed therefor, which deed was duly recorded in the office of the County Recorder of said County on the 20th day of June, 1927, in Book 2345 of Deeds, page 178. That said deed was executed and delivered to plaintiff and defendant as husband and wife, and was intended to convey to them as community property

19-69

possession ofthe accretion. Every one was in possession of that portionof the accretion which was just close to his land. on nte 3rd of December 1941 Ex. 81 The collector Dharwar passed an order stating " There is no opinion on record as to whether the land is abandoned bed or alluvion. It is true that the Dist. Inspector Of Land Records says so but this opinion is based on the inspection of the maps and not the site. It is urged by the appellants and I think there is some thing in their contention that though the portion marked red is old course of the Nalla, it has not been abandoned suddenly by the divertion of the stream but gradualllyy got silted up and recieved alluvial accretion. Whether this is so or not would depend on actual state of the ground that is whether it is flush with the rest of the adjoining lands or whether it is at lower level to clearly show how the old course ran. In the latter case, therex would be a strong presumtion that it is not alluvian. He ordered the Prant Officer to visit the site and to give an opinion after giving a notice to the parties be present and to adduce evidence if necessary. thereafter the Asst. Collector submitted an a reportEx. 82. He recorded some evidence. He thought that the test stated by the Collector would apply effe-ctively only when the inspection was made immidiately after the factum of the actual change in the Nalla bed or when the Nalla course occured. He found that the portion in red in the map prepared could not tecnicaly warrant the denomination of alluvian. Accoring to him it was not strictly gradual, slow imperceptible accretion by deposite of fresh soil by water of the Nalla on the rivarian soil of Hissas in survey No. 4. He declared the site which was 5 acres 17 gunthas and which is now in suit as an abandoned Nalla bed and he put that to openx auction. He stated that there was no question of holding an enquiry under section 37 clause 2 of the Land Rvenue Code as appellant atated on oath that they ahve been making wahivat of the portion put auction for nearly 34 years. The land was sold by public auction and it was purchased by defendant No.2 for Rs.500/-. The sale was confirmed and on appeal to the Collecto he passed an order on 8-5-1942 that the appeal was dismissed ex 63

against that order the plaintiffs have filed the present suit.

9. The map regarding the various lands and the Benninalla is prepared by the Dist. Inspector, Land Records and it is at Ex.54. Therein the portion marked red is the land in dispute andit measures 5 acres 17 gnthas the portion marked blue is the present course of the Benninalla. It is stated for defendants 1 & 2 that the portion of survey No.3 is on the other sideof Benninalla adjoining the village and the portion of that suvey No.number lies between the portionmarked red and the portion marked blue and this portion is shown as A.D.C.B. in the map. The survey No.4 is devided into 7 strips as shown in the map. It was stated that 31 gunthas out of the suit roperty was in possession of owners of survey 4/1, 32 gunthas of owners of survey No. 4/2, 17 guntnas of survey No. 4/3, 19 guntnas of survey 4/4, 24 gunthas of survey No. 4/5, 1 acre and 4 gunthas of survey No. 4/6, and 1 acre 10 gunthas of survey No. 4/7/ 10. Laxman Ex. 53 a witnees for deft. No.1 and who was the officiating Kulkarni of the village Mugnoor has stated that survey No. 3 originally measured 11 acres and 38 gunthas and that 7 acres and 20 gunthas of land out of that survey Number is in the bed of the Nalla now. He stated that the portion A.D.C.B. measured 2 acres and 5 guntnas and that this was a portion of survey No.3 and that portion of survey No.3 on the other side ofthe river and close to the village measured 2 acres and 13 gunthas. he case of the plaintiffs is that the suit land which measures 5 acres and 17 gunthas was an accretion formed gradually and without being noticed. It is stated for defendants 1 and 2 that the site was a old bed of the Nalla and that there was a sudden change in the courseof the Nalla about twelve(12) years back when there were heavy rains. There is no evidence worth the name on record to prove that there was a sudden change in the bed of the Nalla. The extracts from the record of rights produced in the case at Ex. 46, 66, 67 and 79 show that there was a gradual washing away of survey No.3 and the lnad which was washed away gradually increased and it was shown as fallow land. It is also seen that the rent of survey No. 3 was less year by year. Extracts from the

Extr act from the year 1923- 24 are roduced and they show that there was some fallow land. In some years, it is stated that the fallow land was due to the washing wawy of the land. This was evidentally on account of washing away of portions of survey No. by the Benninalla. If there was sudden change in the bed of the Na: lla it could have been noticed by the Revenue Authorities and son steps would have been taken at leest about the years 1923-24 Ex.6(The vi llage kulakrni it appears, made a report a few years befo -re suit and an enquiry was stattdd, It is seen fromm the evidence on record and from the reports of the village kulkarni and Circle Inspector and from the map prepared by the Surveyer that the ~~xx~~ enc roached portion was in possession of the plaintiffs. The plai -intiffs and defendant No.3 raised crops in the suit property ar every one of them was in possession of that portionof the suit property which was closed to his land. Defts. 1 & 2 did not state in their pleadings that there was a sudden change in the bedof the Nalla in aperticular year. At the hearing it was stated for them that there was sudden change about 12 years ago, This is not suppr -orted by record of rights or any other Govt. record.

11. The first point to be decided is as to whether the suit prop- -erty was an accretion or whether it was the old bed of the Nalla The evidence adduced for the plaintiif and the entries in the recc -rd of rights go to prove conclusively that there was an accretion. Alluvian means gradual slow and imperceptible accretion by deposit of ~~xfrsshxxiibyxxwater~~ fresh soil by water upon existing riparian land. As stated above, there is no clear and unambigmousevidence to prove that hte suit property was the old bed of the Nalla. The suit property is on higher level than the bed of the Nalla. Land gained from a river by gradual accretion belongs to the owners of the adjacent soil by the titled of occupancy. Nasaravanji Vs. Nasaravr to Bombay High Court Report page 345 and Narendra Vs. Achhaibar 28/ 28 All. E. 647. The learned Asst. Collector relied on a statement made by Deft. No.3 in his order Ex. 82. That cannot be binding on the other sharers in the survey No.4 who have been making wahivat separately from Deft. No.3. It is stated for plaintiffs that Deft. No.3 was joining hands with Deft. No.2 and his bhaubands. It also appears that he isnot on good terms with the plaintiffs. In sectic -on 64 of Inad Revenue Code it is stated ~~xxxx~~ "When alluvial land

land forms on any bank or shore , the occupant if any of such bank or shore shall be entitled to the temporary use thereof unless and until the area of the same exceeds 1 acre. When the area of the alluvial land exceeds the said extent, it shall be at the disposal of the Collector subject to the provisions of the last preceding section Section 63 says " When it appears to the Collector at any alluvialx land which vests under any law for the time being in force in Covernmen may with due regard to the interest of the public Revenue be disposed of, he shall offer the same to the occupant if any of the bank or shore on which such an alluvial land as formed. The price of the land so offered shall not exceed three times the annual assessment thereof If the said occupant shall refuse the offer, the Collector may dispose of the land without any restrictionas to the priace to be asked. The evidence in the case shows that the entire land of 5 acres and 17 guntha was treated ad one piece and it was held that it was the old bed of Nalla and plaintiffs were asked to take up the same at a price fixed. The plaintiffs refused to do so and stated that the land should be given to them on payment of the assessment to be levied on the land. Taking that as a refusal, the land was sold by public auction and Deft. No.2 purchased the same for 500/- rupees and the sale was confirmed and the plaintiffs and Deft. No. 3 who were in possession were dispossessed and possession was given to Deft.2.2The evidence in the case and the map Ex. 54 shows that there were seven strips in the suit property as stated above and every one of these strips was in ossession of the owners of the corresponding strip in survey No.4. In that view of the case, it is seen that only strips 6 & 7 out of the suit property would exceed one acre and these could only be disposed of by the Collector. Strip No.6 measures 1 acre and 4 gunthas and strip No.7 measures 1acre and 7 gunthas. The acrage of these two strips would be 2 acres and 14 gunthas and the Collector would be justified in disposing of the property under section 63 of the Lnad Revenue Code. There cannot be any justification for disposing of the other portions 1 to 5 as shown in the map Ex. 54. Therefore I find that the suit land was alluvialand as stated in the plaint and that the plaintiffs are entitled to possession of strips 1 to 5 measuring 3 acres and 3 gunthas, and that they are not entitled to 2 acres and 14 gunthas situated towards the west and that the plaintiffs and deft. No. 3 are entitled to get possession

23 72

possession of 3 acres and 4 gunthas. They are not entitled to 2 acres and 14 gunthas of the land. I find accordingly on the issue; and therefore, I find that the owner of survey No.4/1 who is plaintiff No.1 is entitled to recover possessionof 31 gunthas of land adjoining his strip, the owner of survey No. 4/2 who are plaintiffs No. 2 and Deft. No. 3 to possession of 32 gunthas adjoining their strip, the owner of survey No. 4/3 who is plaintiff No. 4 to possession of 17 gunthas close to his land, the ownerof survey No 4/4 who are plaintiff No.2 & Deft. No.3 to 19 gunthas adjoining his strip and the owner of survey No. 4/5 who is plaintiff No. 3 to 24 gunthas close to his land and that the owners of survey No. 4/6+7 are not entitled to get possession of any land which adjoins these pot-hissas.

Order

Plaintiff No. 1 the owner of survey No. 4/1 should take possession of 31 gunthas of the land adjoining his strip and as shown in the map Ex. 54, plaintiff No.2 and Deft. No. 3 the owners of survey No. 4/2 should getpossessions of 32 gunthas of land close to their land, plaintiff No.4 the owner of surveyx No.4/3 should get possessions of 17 gunthas of land adjoining his strip and plaintiff No. 2 and Deft. No. 3 the owners of survey No. 4/4 should get possession of 19 gunthas of the land adjoining their strip and plaintiff No.3 the owner of survey No. 4/5 should get possession of 24 gunthas of land situated close to his land. The claim regarding 2 acres and 14 gunthas of land situated in front of survey No.4 pot-hissas 6 & 7 is not allowed. The parties sahll bear their costs. An enquiry regarding mesne profits from date of suit till possession is obtained is ordered under order 20 rule 12 (C) C.P.C.

12 30 - 9 - 1946 sd/ B.A.Chaugule

Civil Judge Senior DivisionDharwa

True copy

Asst. Govt. Pleader, Dharwar.

25 83

A Suits.

Dharwar.

For a declaration of the plaintiffs' title to a piece of land admeasuring 5 acres 17 gunthas newly formed out of the bed of a revulet called Benni Nalla and lying between Revision Survey Nos. 3 and 4 of the village of Magnur.

GOVERNMENT OF BOMBAY,
Legal Department
Resolution No. 3529
Bombay Castle, 11th April 1947.

Read Government Resolution, Legal Department, No. 7212, dated the 21st October 1946.

Letter from the Collector of Dharwar No. L.A.W.452, dated the 23rd March 1947 - Forwarding a copy of the letter from the District Government Pleader, Dharwar, No. 406, dated the 1st March 1947 and stating that one of the plaintiffs in the suit noted in the margin has filed a Civil Appeal No. 385 of 1946 in the Court of District Judge, Dharwar, against the decision of the Civil Judge (Senior Division), Dharwar, dated the 30th September 1946 and requesting sanction to its defence.

In the Court of the Civil Judge, (Senior Division), Dharwar.
Civil Suit No. 337 of 1944.
Hanamantgouda Ayyangouda Hiregouda and 5 others.
Vs.
The Province of Bombay.
Claim Rs.

RESOLUTION:- Sanction is accorded to the defence of the Civil Appeal No. 385 of 1946 in the Court of the District Judge, Dharwar, on the lines of the brief accompanying Government Resolution, Legal Department, No. 7375, dated the 6th October 1945 and the favourable grounds contained in the judgment of the Civil Judge, (Senior Division), Dharwar dated the 30th September 1946.

By order of the Governor of Bombay

Sbd. for signature
KB3 11/4
S.A.S.

Original R. M. Mehta
R. M. Mehta,
Assistant Secretary to Government.

To
The Revenue Department,
The Commissioner, Southern Division,
The Collector of Dharwar,
The Secretary Bombay Revenue Tribunal,
The District Government Pleader, Dharwar.

Issued 11/4

8Kx.10.4.

Sold after issue

File in Secy's Dept. 2/46

KB13
12/3

S Dept 2/46

14.4.47

27/65

Civil Appeal No. 324 of 1946.

Presented on 4-11-46. Ex. No.1.

In the Court of the District Judge, Dharwar.

APpellant:-Dyavangouda Basangouda Mallappagoudar, Lingayat, 4
Agri. of Mugnoor, Petha Naragund. (Ori.Deft.2)

Vs.

Respondants:-Hanmantgouda Ayyangouda Hiregoudar, Ambigar, 55,
Agri. of Mugnoor Petha Naragund.(Ori.Plff. 1).

2. Ramangouda Karigouda Hiregoudar, 30, Ambigar do,
of Do. (Ori. Plff. 3.)

3. Tayavva kom Hanamantgouda Sannamani, 28, Do, Do,
of Do.(Plff. No.4.)

4. The Provincial Government of Bombay. (Ori.Deft.1

Claim :-

The appellant above named being aggrieved by the decree o the Civil Judge, Sr.Dn., Dharwar dated 30-9-1946 in L.C.Suit No.337 of 1944 begs to prefer this appeal on the following xx among other grounds namely:-

1). That the decree of the L.C. is contrary to law and x evidence and equity.

2). That the L.C. ought to have held that the Bennihalla suddenly changed its course about 12 years ago and that the x suit land is the abandoned bed of Bennihalla.

3). That the L.C. ought to have relied upon the evidence adduced by the defendants that Bennihalla deflected from its old bed suddernly in 1934 on account of floods of Bennihalla due to heavy rains.

4). That the L.C. ought to have held that the plffs have failed to prove that the suit land is alluvial accretion to S.No.4 belonging to respondants 1, 2, 3, and others.

5). That the L.C. ought to held that respondent No.4 i.e. the Provincial Government had become the owner of suit land which was clearly abandoned Nalla bed of Benninalla.

6). That the L.C. ought to have held that xxxxxxxxxxxx sections 63 and 64 of L.R.C. do not apply to the facts of the case.

7). That lower Court has wrongly construed the order date 3-12-1941 of the Collector directing the Asst.Collector to mak

enquiry whether the suit land is alluvial ~~xxxxxxxx~~ accretion and has also wrongly relied upon some observations ~~xx~~ made prior to enquiry made by the Asst. Collector in that order, and to support the contention of the plffs that the suit land is alluvial accretion, which the same Collector who directed ~~xxxxx~~ enquiry by the Asst. Collector has ultimately held that the suit land is the abandoned bed of the Nalla.

8). That the L.C. ought to have relied upon the evidence of the appellant that entire area of S.No.3 was in possession and wahiwat of appellant along with other cosharers.

9). That the L.C. has wrongly held that portion of S.N.3 remained fallow on account of washing away of the same by Banninalla in as much as the said portion of S.No.3 remained fallow on account of washing away of crops by the flood water of Yalavihall which joins Benninalla to the west of Benninalla just at the end of S.No.3.

10). That the L.C. has wrongly construed Exs.46, 66, 67 and 79.

11). That the L.C. has wrongly thrown the burden on the defts to prove that the suit land is abandoned Nalla bed.

12). The trial court has iggored that the S.No.3 was almost fully covered with crops in 1929 ans even after that year. This is a sure indication that the sudden change is only about 12 years old.

13). The trial court has ignored the physical condition such as the cluster of grown-up trees and at the corner of the new and the old bed and the force of the water of the Yalvinalla and the low level of the site of the old bed.

14). The trial court erred in saying that the rent of S.NO.3 decreased year after year.

15). The admission of deft 3 is not given its full evidentiary value.

16). The trial court erred in not treating the entire area as one.

17). The trial court has given undue importance to the possession of the plff though it was only for few years before the

18). At any rate the trial court should have held that would not ~~xxxx~~ get possession of pot No2 in the suit lan belongs to deft 2 solely by reason of his admission. The court has ignored the fact that he remained absent at th

19). The trial court should have held that the plff's

& For the reasons stated above the appellant pra decree of the trial court be set aside and he costs of be awarded throughout.

Dharwar
4th November 1946.

Pleader.

ಅಪೀಲಿನ ಸುನಾವಣೆ ಕ್ಕಾಗಿ ನೇಮಿಸಿದ ದಿವಸ ಪಸ್ಸು ಆಯತು ರಿಸ್ಪೋಂಡೆಂಟನಿಗೆ ನೋಟೀಸು (ಆ. ೪೧, ಕಾ. ೧೪).

ಧಾರವಾಡ ಇಲ್ಲಿಯ ಡಿಸ್ಟ್ರಿಕ್ಟ ಜಜ್ಜಕೋರ್ಟನಲ್ಲಿ

ಮುಕ್ಕಾಮು ಧಾರವಾಡ ಇಲ್ಲಿ. ೫೫

ದಿವಾಣಿ ಮುಕದಮೆ ನಂಬರು ೬೬೭ ಸನ್ ೧೯೪೬ನೇ ಪೈಕಿ

ಅಪೀಲೆಂಟ

ವಿರುದ್ಧ

ರಿಸ್ಪೋಂಡೆಂಟ.

ಮುಖಾಂತರ —

ಕೋರ್ಟಿನ ಸನ್ ೧೯೪೬ನೇ ತಿಂಗಳ ತಾರೀಖಿನ ತೀರ್ಪಿನ ಮೇಲೆ ಅಪೀಲು

ಬೇಲೀಫನ ಹಸ್ತರ —

ರಿಸ್ಪೋಂಡೆಂಟನಾದ

ಇವನಿಗೆ

ತಾರೀಖು —

ನಿನಗೆ ನೋಟೀಸು ಕೊಡುವದೇನಂದರೆ, ಈ ವ್ಯಾಜ್ಯದಲ್ಲಿ ಕೋರ್ಟನಿಂದ

ಸಾಕ್ಷರ.

ಮಾಡಲ್ಪಟ್ಟ ಹುಕುಮನಾಮೆಯ ಮೇಲೆ ಅಪೆಲಿಂಟ . ಇವನಿಂದ
ಅಪೀಲ ಮಾಡಲ್ಪಟ್ಟದ್ದು ಅದು ಈ ಕೋರ್ಟಿನಲ್ಲಿ ರಜಿಸ್ಟರು ಮಾಡಲ್ಪಟ್ಟಿದ್ದಿ, ಮತ್ತು ಈ ಅಪೀಲಿನ ಸುನಾವಣೆಯ.
ಎಗ್ಗೆ ಸನ್ ೧೯೪೪ ನೇ ಇಸವಿಯ [illegible] ತಿಂಗಳಿನ ೧೭ ತಾರೀಖು ಈ ಕೋರ್ಟಿನಿಂದ
ನೀಮಿಸಲ್ಪಟ್ಟಿದೆ.

ನೀನು ಸ್ವತಃ ಯಾ ನಿನ್ನ ವಕೀಲನು ಯಾ ಅಪೀಲಿನಲ್ಲಿ ನಿನ್ನ ಸಲುವಾಗಿ ಕೆಲಸ ನಡಿಸಲಿಕ್ಕೆ ಕಾಯಿದೆಯಿಂದ
ಅಧಿಕಾರ ಪಡೆದಂಥ ಬೇರೊಬ್ಬ ಮನುಷ್ಯನು ನಿನ್ನ ಬಗ್ಗೆ ಹಾಜರಾಗದಿದ್ದರೆ, ನಿನ್ನ ವರೋಕ್ಷದಲ್ಲಿ ಅಪೀಲಿನ
ಸುನಾವಣೆಯಾಗಿ ನಿರ್ಣಯವಾಗುವದು.

ಈ ಹೊತ್ತು ಸನ್ ೧೯೪೪ ನೇ ಇಸವಿಯ [illegible] ತಿಂಗಳ [illegible] ನೇ
ತಾರೀಖಿನ ದಿನ ನಮ್ಮ ಸಹಿ ಮಾಡಿ ಮತ್ತು ಕೋರ್ಟಿನ ಮೊಹರು ಮಾಡಿ ಕೊಡಲ್ಪಟ್ಟತು.

CLERK OF THE COURT

Suits
Dharwar.

For a declaration of the plaintiffs' title to a piece of land admeasuring 5 acres, 17 gunthas newly formed out of the bed of a revulet called Benni Halla and lying between Revision Survey Nos. 3 and 4 of the village of Magnur.

GOVERNMENT OF BOMBAY,
Legal Department.
Resolution No. 5858
Bombay Castle, 4th June 1947.

Read Government Resolution, Legal Department, No. 3529, dated the 11th April 1947.

Letter from the Collector of Dharwar, No. L.A.N.-452, dated the 14th May 1947 - Forwarding a copy of the letter from the Distric Government Pleader, Dharwar No. 192, dated the 23rd April, 1947, and stating that the Second mentioned plaintiff in the suit noted in the margin has filed a Civil Appeal No. 324 of 1946 in the Court of the District Judge, Dharwar, against the decision of the Civil Judge (Senior Division), Dharwar, dated the 30th September 1946 and requesting sanction to its defence.

In the Court of the Civil Judge (Senior Division), Dharwar. Civil Suit No. 337 of 1944.	
1. Hanamantgouda A.Hiregouda 2. Ramangounda F. Hiregoonda and 4 others - - - - - - Plaintiffs; Vs. The Province of Bombay - - Defendant.	

Endorsement by the Commissioner, Southern Division, No. L.S.T. 346 - Forwarding the above with his concurrence.

RESOLUTION :- Sanction is accorded to the defence of the Civil Appeal No. 385 of 1946 in the Court of the Distric Judge, Dharwar, on the lines of the brief accompanying Government Resolution, Legal Department, No. 7575, dated the 6th October 1945 and the favourable grounds contained in the judgment of the Civil Judge (Senior Division), Dharwar, dated the 30th September 1946.

By order of the Governor of Bombay,

Sd. for signature.
Original. R. M. Mehta

KBB
4/6
S.A.S.

R. M. Mehta,
Assistant Secretary to Government.

To
The Revenue Department,
The Commissioner, Southern Division,
The Collector of Dharwar,
The Secretary Bombay Revenue Tribunal,
The District Government Pleader, Dharwa

Issued
hc. 14.6.47

the sale. It appears that the plffs had applied for having the suit land given to them on payment of an annual assessment only and this request of theirs was turned down by the Assistant Collector (vide Ex.59). On 14-8-1941 the plffs again applied to the Assistant Collector (vide Ex.60) in which they alleged that the suit land was an alluvial land which was in the process of formation for over 100 years, that they had been in possession of it as holder of riparian land and that the were praped to pay for the suit land three times the assessment. The Assistant Collector then called for a report of the Kuhalkari. The Kohalkari reported that it had already been held that the suit land was the abandon bed of the nalla and not an alluvial accretion and therefore sections 63 and 64 of the Land Revenue Code would not apply. It appears that the application of the plffs was then rejected and the plffs approached the Collector against the Prant Officer's order. The Collector as can be seen from Ex.81, was, at that stage of the opinion th the suit land might have been the old course of the nall but it had not been abandoned suddenly by the diversion of the stream but that it gradually got silted up and ha received an alluvial accretion. The prant Officer was asked to ascertain by a personal visit to the place whether the suit land was flush with the rest of the adj joining lands or whether it was at a lower level, clearl showing how the old course ran. In the latter case, according to him, there would be a strong presumption that it was not alluvial. The Prant Officer was thus asked to make a report on the point. Ex.82 is the Prant Officer's report. He pointed out that the test suggest-ed by the Collector, though it was an excellent one, could not have been effectivelyapplied in the case when an inspection was not made immediately after the factum of the actual change in the nalla bed. He pointed out that there was no visible trace of a deep, vacant portio but that was not conclusive on the point whether it was not an old bed of the nalla and but was an alluvial land

Copy was applied for in person on the 27th July 1948.

Sd/- K.B.Kadkol,
Record Keeper.

Copy was ready for delivery on the 5th Aug 1948

Sd/- K.B.Kadkol,
Record Keeper.

Ceopy was delivered on the 13th Aug 1948.

Sd/- K.B.Kadkol,
Record Keeper.

(6680)

Sop.	12/	9/-
S.C.	3/	9/-
Com.	3/	2/-
S.C.	-/	13/-
Dap.	0/	2/-
	19/	12/-

Received on 1-11-46.
Registered on 13-11-1946.
Decided on 23-7-1948.
Duration 1 year 8months and 22 days.

In the Court of the District Judge,

at Dharwar.

Appeal No.312 of 1946 with C.As No.324 and 335 of 1946 from decree in C.S.No. 337 of 1944 of the Court of the Civil Judge, Senior Division of Dharwar.

(Mr.B.A.Chougule).

Pleaders:-

Mr.R.V.Jathar,
Asst Govt Pleader.

The Province of Bombay..... Appellant (Original Deft No.1)

against.

Mr.Jamkhandi for No.1

Mr.Dixit for 2 to 5.

Mr.Malimath with Mr.A.S.Patil for No.6

Mr.R.M.Patil for No.7.

1. Hanmantgouda Nyangouda Hiregoudra of Mugnur Petha Naragund.
2. Fakirgouda Canna-sivangouda Hiregoudar of do.
3. Ramangouda Karigouda Hiregoudra of do. (Org.plff 1 to5
4. Tayava-kom Hanmantgouda Sanhanani of do.
5. Karigo da Fakirgou a Hiregoudra of do.
6. Lyavengouda Basangouda Mullangoudra of do (Deft 2)
7. Yellappugouda Ningangouda Hiregoudra od D (Deft 3)

J U D G M E N T

These appeals arise out of a decree in L.C.Suit No 337/of 1944 passed on 20-9-1946 by the Civil Judge, Senior Division, Dharwar.

2. The Provincial Covernment - deft No.1 - has filed appeal No.312 of 1946. Appeal No.324 of 1946 is preferred by deft No.2 while in Civil No.335 of 1946 th appellant are plffs No.2 and 5.

3. The suit was filed on 22-11-1944 by five plaintiff who along with deft No.3, are the occupants of 7 stri of land which forms one survey number (S.No.4) which is situated in the village Mugnur. The total area of S.No.

is one acre 15 gunthas and it is divided into small seven strips. Plff No.1 is the owner of S.No.4/1. S.No.2 is that of Plff No.2 and deft No.3. Plff No.4 owns S.No.4/3. S.No.4/4 is that of plff No.2 and deft No.3. S.No.4/5 is of plff No.1 S.No.4/6 is that of plff No.2 and deft No.3 and S.No.4/7 is that of plff No.3. Plff No.5 is the son of plff No.2.

4. The allegations in the plaint are that by the side of S.No.4 was flowing a water course or a nalla known as "Bennihalla" and during the course of more than 130 years, the stream was gradually changing its course and portions of a land on the other side of the nalla (S.No.3) were being gradually washed away and an alluvium was being slowly formed on the side of S.No.4. It was claimed that the alluvial land measured 5 acres 17 gunthas and was not assessed but each of the sharers in S.No.4 was in occupation of that portion of the alluvial land which abutted his share and was cultivating it. It was alleged that the revenue officers wrongly held that the area of 5 acres 17 gunthas, which was really an alluvial land and an accretion to S.No.4 was the old bed of the stream and, inspite of the protests of the plffs, this land was put up for sale at an auction and deft No.2 purchased it from the Collector. The plffs preferred appeals to the Collector and the Revenue Tribunal but these appeals were rejected and deft No.1 took possession of the land. The plffs then caused a notice to be served upon the Provincial Government and filed the suit. Deft No.3 was impleaded as deft, as he was not willing to join the other plaintiffs in filing the suit. The reliefs claimed in the suit are (1) a declaration that the suit land measuring 5 acres 17 gunthas was an alluvial accretion and that the decision of the revenue officers was wrong and (2) delivery of possession of the land from d ft No.2, mesne profits and costs of the suit.

5. The suit was resisted by defts Nos.1 and 2. Deft No.3 by his written statement (Ex.20) supported the plffs. Ex.24 is the written statement of deft No.2 (1). The allegation in the plaint that the suit land was an alluvial accretion was denied. It was alleged that the suit land was the bed of Bennihalla which had changed its course, that the

land vested in Government under Section 37 of the Land Revenue Code, that Government had the right to dispose it of and it was sold by a public auction on 18-7-1941, that deft No.2 had purchased it for Rs.560 and that the sale was confirmed on 4-8-1941. It was contended that the orders of the revenue officers regarding the sale of the land and the confirmation of the sale etc. were legal and were binding on the plaintiffs. It was denied that Sect-ions 63 and 64 of the Land Revenue Code, were applicable to the disposal of the land.

6. By a written statement (Ex.19) deft No.2 supported deft No.1 in the defence to the suit. It was alleged by him that there was sudden change in the bed of nalla, that the nalla gave up its old course for a new one which went through S.No.3 which was thus divided into two parts and that the suit land was the old bed of the nalla which the Government had the right to dispose of and it had been purchased by deft No.2 and deft No.2 had been put in possession of it after the auction sale. Additional defences were raised by him and these were that the suit was barred by limitation under Articles 14, 142 and 144 of the Limitation Act, that the market value of the land had been under-valued by the plffs and that the proper court-fee had not been paid.

7. On those pleadings, issues were framed and findings were given on them by the learned Civil Judge as below:-

1. Do the plffs and deft No.3 prove that the plaint land was an alluvial land as alleged in the palin

2. If so, are the plffs and deft No.3 entitled to the sale under sections 63 and 64 of the Bombay Land Revenue Code ?

3. What is the market value of the land in sui

4. Has proper court-fee stamp been paid by the plaintiffs ?

5. Whether the plffs and deft No.3 are entitled to the possession sought ?

6. Is the claim in time ?

Findings :-

1. Yes. 2. They are entitled to a portion of the same as stated below. 4 and 5. Already decided. 5. They are entitled to possession of the property stated below. 6. Yes.

6. At the hearing of the appeals, the findings of learned Civil Judge on Issues No.3 and 4 are not disputed and therefore the only issue arise for decision in the appeals are :-

1. Do the plffs and deft No.3 prove that the suit land was an alluvial land as alleged in the palnt ?

2. If so, are they entitled to it under sects 63 and 64 of the Land Revnue Code ?

3. Whether the plffs and deft No.3 are entitled to possession of the suit land ?

4. Whether the claim is in time ?

5. What decree should be passed.

My findings are:-

1. No. 2. Does not survive. 3. No. 4. Yes. 5 as in the 2nd order.

REASONS.

9. The land in dispute is shown as the areax marked in red in the map (Ex.54). It is undisputed that the area of this land is 5 acres 17 gunthas. The present bed of the stream is shown in blue. Between the nalla and the suit land, there is another strip of land shown by the letters A.D.C.B and this is stated to be 2 acres and 7 gunthas. It is admitted by the plffs that this land A.D.C.B. was in the possession of deft No.2 who is one of the sharers in S.No.3 through xx which the nalla has at present its course. It is in evidence that there is a smaller nalla to the west known as Yelavi Halla and both these nallas meet together near S.No.3. This nalla is not shown in Ex.54. Plff No.2 in his evidence (Ex. 43) stated that the Yalavi Halla is a small nalla in comparison with the Benni-Halla, but when the Benni-Halla is full, the waters of the Yalavi Halla recede. Iyavangouda Basangouda (Ex.77) a witness for the deft No.2 stated that waters from the Yalavi Halla used to collect in S.No.3 and therefore the land became fallow.

10. I will first refer to the evidence of documents to show how the present litigation started. On 5-10-1939, the village officers made a report (Ex.55) pointing out that a nalla was running by the side of S.No.3 that a portion of S.No.3 had been washed away and there was an additional area near near S.No.4. A revenue enquiry was thereupon ordered in the course of which six persons including plffs Nos.1 to 3 and 5 and deft No.3 made a statement to the Circle Inspector on 7-1-1940 (Ex.56) that some area of S.No.3 had been washed away by the nalla and an accretion had been formed to S.No.4 and that this accretion should be given to them on payment of a price to be settled by panchas. The then Circle Inspector Abdulwahid s/o. Abdul Rahiman (Ex. 58) a witness for defts Nos.1 and 2 report(Ex.57) on 15-1-1940 that S.No.3 originally comprised an area of 11 acres 33 gunthas and was cut by the stream which had washed away the land and only an area of 3 acres of cultivable land and remained and there was an accretion near S.No.4 and the owners of S.No.4 had taken possession of that area and were cultivating it and, before the land could be disposed of, the District Inspector of Land Records should asked to dirmine the area of th accretion as well as that of S.No.3. The Mahalkari reported on 16-4-1941 that the owners of S.No.4 were no willing to have the land on payment of an occupation price, that there was a keen demand for the land in the village and that the proposal of the Circle Inspector to form the abandoned bed of the nalla into a seperate survey number might be approved of, after fixing an upset price at Rs.250. The Assistant Collector thereupon passed an order on 27-4-1941 that the abandoned nalla bed measuring 5 acres 17 gunthas should be sold by public auction onan impartible tenure with an upset price of Rs.300/-. The Mahalkari then held a sale and deft No.2 gave the highest bid for Rs.500/-which was accepted. The mahalkari reported the sale for confirmation (vide Ex.58). The Assistant Collector confirme

He referred to a statement made by deft No.3 in which he had stated that the nalla had changed its course immediately and only. He also referred to the circumstance that the occupants of S.No.3 had been cultivating the entire area of S.No.3 and that this area included the strip of land shown by letters A D C B in Ex.B . This, according to the Assistant Collector, was an indication that the suit land was not an alluvial land but was an abandoned nalla bed. The Collector accepted the Asst Officer's report and passed an order on 2-5-1942 (vide Ex.65) that the suit land was the abandoned bed of the nalla, that it had been sold to the owner of S.No.3 who had already lost a big slice of his land as a result of the deflection of the nalla and so there was no reason to accept the request of the plffs to be allowed to purchase the land, after the auction sale had already been held and confirmed. The plffs then filed an appeal to the Revenue Tribunal. Ex. 65 is the decision of the Tribunal dated 24-9-1943. It was pointed out by the Tribunal that S.Nos.3 and 4 had been surveyed in July 1937 and that the nalla had changed its course and was flowing entirely in S.No.3 as shown by the map prepared by the Inspector of Land Records. The Tribunal held that the suit land was an abandoned nalla bed and that there was no evidence that the nalla had gradually left its old course and moved to its present course by traversing the portion of the including A D C B situated between the old and the new courses. It was held that there was little evidence that the nalla had traversed the portion A D C B and this, according to the Tribunal, could reasonably be held to be the proof of the allegation that the change in the course of the nalla was sudden and was not gradual and the suit land was not an alluvial land, the plffs thereafter gave a notice under section 80 C.P.C. and filed the suit on 22-1-1944.

11. The main question in the appeals is whether the suit land comprising 5 acres 17 gunthas, which has

has been disposed of by the Collector as the abandoned bed of the nalla and purchased by deft No.3, was an alluvial accretion on the bank of S.No.4, which required to be disposed of by the Collector in accordance with provisions section 63 and 64 of the Land Revenue Code. The learned Civil Judge has given [illegible], and that land was an alluvial land formed on the bank of the nalla and that the bank was S.No.1 which is owned by the plffs along with defts No.3. The plffs claim possession of the land from defts No.2 the purchasers with same rights on the basis that the suit land is an alluvial accretion. The learned Civil Judge, against whose decision this appeal is filed by the defts, treated the suit land as divided into seven portions as shown in the map (Ex.54) each portion abutting a pot hissa in S.No.3 and as each of these portions was less than one acre in area, he held that the holder of a riparian pot hissa in S.No.4 adjoining each portion was entitled to possession of the same. In the case of the two remaining portions, each of which exceed one acre in area, he held that the holder of a riparian pot hissa could not claim these. The plffs were thus, under the decree passed by the learned Civil Judge, entitled to take possession of a land measuring three acres and gunthas out of the suit land. In appeal, he passed such a decree on the construction of sections of the Land Revenue Code which is as follows:-

"When alluvial land forms on any bank or shore, the occupant, if any, of such bank or shore shall be entitled to the temporary use thereof unless or until the area of the same exceeds one acre. When the area of the alluvial land exceeds the said extent, it shall be at the disposal of the Collector subject to the provisions of the last preceding section." In the present case, the suit land, assuming that it was an alluvial land, exceeds one acre in area and therefore section 64 had no application at all. It would not be permissible to treat an alluvial land exceeding one acre which may abut some pot hissas of the adjoining land as comprising

artificially strips abutting each pot kissa and to [illegible] that the holder of a pot kissa of the adjoining land entitled to the temporary use of the strip, on the ground that the strip is not more than one acre in area. The whole of the alluvial land will have to be taken into account for the purpose of section 64 and, when it is found to exceed one acre in area, it would be at the disposal of the Collector who can deal with it under section 63 of the land revenue Code. The very basis on which the learned Civil Judge has passed the decrees granting to some of the plaintiffs strips of the suit land treating it as an alluvial land and disallowing the claim of the other plaintiffs in respect of strips exceeding one acre in area, is wrong. When the alluvial land exceeds in area one acre, the occupant of the bank or shore is not entitled to the temporary use of it. The only right which the holder of a riparian land can assert would be that provided in section 63 as follows:-

When it is made to the Collector that any alluvial land, which vests under any law for the time being in force in the Crown for the purposes of the Province, may with due regards to the interests of the public revenue be disposed of, he shall offer the same of the occupant, if any, of the bank or shore on which such an alluvial land has formed. The price of the land so offered shall not exceed three times the annual assessment thereof. If the said occupant shall refuse the offer, the Collector may dispose of the land without any restrictions as to the price to be asked. Thus the restriction placed upon the power of the Collector to dispose of any alluvial land exceeding one acre in area is that he has to offer the said land to the occupant of the Bank or shore on which the alluvial land is formed for a price which shall not exceed three times the annual assessment of the land (if the alluvial land has not been previously assessed, the assessment will have to be first made and then the price determined at three times the assessment) and if the occupant refused to purchase it, then the Collector may

may dispose of the land without any restriction as to the price. I have already referred to the order passed by the Asst Collector on 27-4-1941 for the sale of the suit land on the basis that it was the abandoned bed of the nalla (vide Ex.56). As the revenue Officers at that time did not hold that the land was an alluvial land, the omission to make an offer to the riparian holders holders under section 63 before the land was sold be auction can be understood. It was after the auction sale was held and confirmed by the Assistant Collector, that that the plffs had applied to the Assistant Collector on 14-8-1941(Ex.60) that the land was an alluvial land and they were prepared to pay for the suit land three times the assessment. The claim of the plffs for possession of the land and for mesne profits, which had been partially accepted by the learned Civil Judge in the decree passed by him, is not strictly maintainable. I would in this connection refer to a similar case reported in Ramodar v. The Secretary of State for India (23 Bom.L.R.772). At page 774 Beaumont C.J. referred to an appropriate form of suction action to be filed by a person who claims any alluvial land. His Lordship observed as follows:-

" But assuming that case (Ghoutabhai v Secretary of State) 22 Bom.L.R.136; to be right and assuming that the order passed by the Collector in 1911 under Sect. 37 does not bind the plffs and does not affect their interests under section 63, the question then arises as to what form of action the plffs can properly bring. The Collector is not bound to allot the land to the plffs under section 63 unless he is satisfied that it may with due regard to the public revenue be disposed of. Mr. Desai says that he is not troubled with that condiction because the Collector has actually made a disposition of the land under section 37, and has thereby admitted that the land may properly be disposed of. But it seems to me that it does not follow from the fact that the Collector, assuming the land to be non-alluvial, came to the conclusion that it could be properly disposed of

having regard to the interests of the public revenue under section 37 i.e. at the market price, that he would have come to the same conclusion on the assumption that the land was alluvial land, and as such could be disposed of at three times the annual assessment.

I think the Collector has never expressed any view as to whether the land can properly be disposed of having regard to the interest of the public revenue on the assumption that it is alluvial land to which section 63 applies. Therefore, it seems to me that, assuming the land to be alluvial, still it would not be possible for the plffs to get an order for the recovery of possession of the land. All they could do would be to get a declaration that the case fell within section 63 because the land was alluvial and an injunction to restrain the Collector from dealing with the land in derogation of their rights or something of that sort. Any action with the plffs could bring would, in my opinion, not be an action for the recovery of the land to which section 144 of the Indian Limitation Act applies, but would have to be some form of action to which article 120 applies, and any such action would be barred after six years."

Murphy J. who gave a concurring judgement observed on this point as follows at page 775:-

"What the plffs really require is that the Collector should be directed to cancel his own order, evict the defts in possession, and then make a grant to them in the terms of section 63".

In the present case, the learned Civil Judge has not even made a provision for the payment of three times the annual assessment to the Government by some of of the plffs in whose favour he has made an order for possession of a part of the suit land. The form of the decree is thus open to the objections referred to above.

12. The burden of proving that the suit land was an alluvial formation on the bank of S.No.4 lay on the plffs. It is clear from paras 9 and 10 of the judgement of the learned Civil Judge that, in deciding

whether the plffs had prooved their case, he first re-
-ferred to the defts' case viz. that the suit land was
the abandoned bed of the nalla and, after holding that
the defts had failed to proove their case, he referred
to the evidence led for the plffs in para 11 and obse-
-rved as follows:-

" The first point to be decided is whether the suit property was an accretion or whether it was the old nalla. The evidence adduced for the plffs and the entries in the record of rights go to proove con-
-clusively that there was an accretion."

The learned Civil Judge did not specify the evidence of the plffs referred to by him. The entries in the record of rights on which he mainly relied are Exhs. 66 and 46. In the map (Ex.54) the present course of the nalla is shown in blue. If the suit land is to be held as an alluvial accretion, the strip of land A D C B which lies between the present bank of the nalla and the suit land, must also have been an alluvial land. The plffs have not claimed it in this suit. Plff No.1 in his evidence (Ex.43) state that they had filed a suit reg-
-arding this strip also but that suit had been withdrawn with liberty to file a fresh suit and no suit has so far been filed again. It is admitted that the strip A D C B has been in the possession of deft No.2 who is one of the sharers in S.No.3. The map (Ex.54) was pre-
-pared on 13-5-1940 by the Inspector of Land Records after measuring S.Nos 3 and 4 and the suit land and the other adjoining fields. It is significant to note that A D C B is shown as a part of S.No.3. The present course of the nalla shown in blue in Ex.54 thus lies entirely within S.No.3 and if A D C B is a portion of S.No.3, which is cut into two by the course of the nalla, A D C B is not an alluvial accretion and for the same reason the suit land which lies further away from the bank of the nalla could hardly claim that character. The learned Civil Judge appears to have relied mainly upon the extracts of the record of rights in respect of S.No.3. Ex.66 is for the year 1923-24 to 1928-29.

It is stated that about six acres of land had been washed away by the nalla. Ex.46 is an extract for the year 1931-32 to 1941-42. The area of land washed by the nalla from S.No3 which consists of 11 acres 38 gunthas is shown to be varying from 9 acres 38 gunthas in 1931-32 to 7 acres 30 gunthas in 1941-42. The area covered by the stream was in the year 1935-36 and it was 10 acres 18 gunthas. It appears from these extract that the stream was not occupying a uniform area out of S.No.3 and it had cut S.No.3 into two pieces of cult-ivable area, one of which is A D C B which at present is 2 acres 7 gunthas, according to plff No.1 as stated by him in his evidence (Ex.43). The learned Civil Judge appears to have taken the view that when the nalla made in roods on S.No.3 and washed away land from it on one side of the bank of the stream, there must have been a corresponding accretion on the opposite bank of the nalla. There are hardly any materials for this inference. It may be that the nalla might have occupied more area out of S.No.3 in a particular year and it might have dwindled in size in the subsequent year as appears from the areas mentioned in Exhs 66 and 46. As regards the strip ADCB plff No.2 in his evidence (Ex.43) stade that the land was there since last 7 or 8 years and that the bed of the stream was lower by one cubit at the point A and lower by two cubits at the point D. He could not give the depth at the points C and B. He admitted the deft No.2 has been in possession of this land during this period. His witness Sangouda Fakirgouda (Ex.44) stated that the area A D C B was cultivable for the last 10 to 12 years. He made out a somewhat new case for the plffs by stating that it was the old bed of the stream. Yellappa Hanmappa (Ex.51) one of the witnesses for the plffs admitted that there was a change in the course of the stream 13 years ago. If the nulla runs through the limits of S.No.3 and A D C B is a part of S.No.3

and this has been ascertained on measurement by the Inspector of Land Records in 1940 when Ex.54 was prepared, there is no room for the plffs' case that XXXXXX A D C B was also an alluvial accretion formed on the opposite side of the bank of the nalla and this points to the probability of the area of the suit land shown in red in Ex.54 being the former bed of the nalla. The then Asst Collector in his report (Ex.82) has discussed this point and had considered whether there was evidence to show that the nalla had left itsold bed gradually moving towards S.No.3 and attained its present position or whether it had suddenly changed its course from the are a shown in red in Ex.54 towards the present position marked blue. He rightly observed that if it was a gradual change of the bank, it had ~~preference~~ pefference to traverse the portion of S.No.3 marked A D C B. He could see no signs of this having happened. The Assistant Collector had before his a statement made by deft No.3 who is one of the sharers in S.No.4 along with the plffs, that the nalla had suddenly changed its course and the suit land was the abandoned bed of the nalla. Such a statement ma e by one whose interests were identical with those of the plffs supports the view taken by the Assistant ~~in~~ Collector. It appears that deft No.3 was not allowed to join the plffs owing to his having made such a statement in the revenue enquiry, though at present deft No. 3 is making a claim to the suit land in the same way as the plffs are doing. There are other indicationsx as well which show that the suit land must have been the abandoned bed of the nalla, though there is no satisfactory evidence as to when the nalla changed its course and left the suit land for the present bed which lies entirely through S.No.3. Laxman Gourishankar Patil (Ex.53) was the Kulkarni of this village. He stated that the height of the land in S.No.3 is 6 cubits from the bed of the river that the site A D C B is higher by about 6 cubits from the bed of the river, that A D CB

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was not accretion and that crops were being raised in that strip by the owners of S.No.3. Dyavangouda (Ex. 77) who is a witness for deft No.2 stated that the level of A D C B was 4 or 5 cubits higher than the part of the nalla and further that the strip A D C B and S.No.4 are on the same level. It appears therefore that the suit land which is shown in red in Ex.54 is lower in level than A D C B and S.No.4. This is an indication of the land being not an alluvial accretion but of its being the former bed of the nalla. I am therefore satisfied that the plffs have not led sufficient evidence to prove that the suit land was an alluvial accretion. On the other hand, the evidence indicated more strongly the probability of the nalla having changed its course and left the suit land as the abandoned bed and that it had not gradually receded from its position after traversing the portion ADCB. The position of the strip A B C B as a part of S.No.3 is an important circumstance and militates against the plffs' case that the suit land was an alluvial accretion. The suit land as the abandoned bed of a nalla vested in the Government and it was open to the Collector under section 37 of the Land Revenue Code to dispose it of by auction. The provisions of Sects 63 and 64 of the Land Revenue Code have no application to the disposal of the land.

12. On behalf of the Provincial Government and deft No.2, an objection was taken that the suit was barred by limitation. It was pointed out that the suit was filed on 22-11-1944 when the decision of the Revenue Tribunal (Ex.65) is dated 24-9-1943. It was contended that the suit should have been filed within one year from the date of the decision of the Revenue Tribunal and, as it was filed after the expiry of one year from that order, under section 37(3) of the Land Revenue Code, it was liable to be dismissed. I do not think that there is any substance in this

in this contention. Sec.15(2) of the Limitation Act provides that, in computing the period of limitation prescribed for any suit of hich notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded. I therefore agree with the learned Civil Judge that the suit is not barred by limitation.

13. The plffs have failed to prove that the suit land is an alluvial land and there they are not entitled to any relief to which they would have been entitled under Sections 63 and 64 of the Land Revenue Code. The decree passed by the learned Civil Judge in favour of some of the plffs is therefore not proper. I therefore pass the following order:-

O R D E R.

Civil Appeal No.312 of 1946 is allowed. The decree of the Lower Court is set aside and the suit is dismissed with costs through out.

23rd July 1948. Sd/- R.G.Sainde.
District Judge.

Seen
Sd/- S.S.Nalimath,
D.G.P.

Seen
Sd/- R.V.Jathar
Asst G.P.

Seen
Sd/- B.K.Patil
Pl.for R.7

Grounds of Appeal.

1. The decision of the lower Court is contrary to law, evidence and the circumstances in the case.

2. The lower Court erred in holding that the land in suit viz. 5 acres 1 gunthas of Khgnur marked in red in the map Ex.54 and adjoining plff's land R.S.No.4 was alluvial accretion. It ought to have held that it was an abandoned bed.

3. The lower Court erred in inferring from the R of R Exs.46, 66, 67 and 72 that there was

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a gradual washing away of R.S.No.3 and that the land thus washed away gradually increased. The R of R extracts do not show gradual washing. For the first time in about 1923-24 R.S.No.3 was shown to be fallow to the extent of 8 or 9 acres.

4. The Lower Court was wrong in concluding that the land was formed by alluvial accretion from the mere fact that plffs were in possession of the newly formed land.

5. In deciding the case the lower court has erroneously placed the onus of proof on the appellant and has wrongly based its decision on the omission of the appellant to state in its written statement, the period of the sudden change of the nalla, course.

6. The ~~lower~~ lower court has failed to appreciate properly the oral and the documentary evidence in the case. It ought to have given due weight to Ex. 82. The report of the Assistant Collector made after personal inspection of the suit land, and holding that that the same is an abandoned bed.

7. The lower court has misunderstood the principles of law of alluvian and has mis-applied it to the case.

8. The lower court erred in allowing plffs' claim to extent of 2 acres 14 gunthas out of the suit land. It ought to have dismissed the entire suit land of plff.

Drafted and presented by on
1st November 1946.

Sd/- S.B.Halepur
Govt Pleader.

Typed by Sd/- x x x

Read by Sd/- x x x

Compared by Sd/- x x x

"True Copy"

Sd/- B.A.Joshi,
Clerk of the Court.

Unnumbered copy

2920—10,000—6-47—R(6)*

Civ. A 42 k.

ಅಪೀಲಿನೊಳಗಿನ ಹುಕುಮುನಾಮೆಯು (ಆರ್ಡರ್ ೪೦, ಕಾ. ೪೫).

(ಫಾರ್ಮ ನಂಬರು ೯, ಪರಿಶಿಷ್ಟ ಗ, ಶೆಡ್ಯೂಲ ೧)

ಹುಕುಮುನಾಮೆಯು

——— CA 312/46 with CA 324/46 and CA 385/46

ಧಾರವಾಡ ಇಲ್ಲಿಯ ಡಿಸ್ಟ್ರಿಕ್ಟ್ ಜಜ್ಜ ಕೋರ್ಟಿನಲ್ಲಿ.

ಮುಕ್ಕಾಮು ಧಾರವಾಡ ಇಲ್ಲಿ. ತಾ॥ ಸಿ

ಅಪೀಲ ಮೊಕದಮೆ ನಂಬರು 311 ಗಳ ಸನ್ ೧೯೪೬ನೇ ಸಾಲಿಕಿ

(೧) ಮುಂಬಯಿ ಪ್ರಾಂತ

ಅಪೀಲೆಂಟ (ಮೊದಲನೇ ಪ್ರತಿವಾದಿ)

ವಿರುದ್ಧ

(೧) ಹನಮಂತನಾಡಾ ಅಮ್ಮಿನಭಾವಿ

ರಿಸ್ಪಾಂಡೆಂಟ (ಮೊದಲನೇ ಫಿರ್ಯಾದಿ)

ಧಾರವಾಡ ಇಲ್ಲಿಯ ಸಿ. ಜ. ಸಿವಿಲ್ ಜಜ್ಜ ಕೋರ್ಟಿನ ಸನ್ ೧೯೪೪ನೇ

ಇಸವಿಯ ನಂಬರು 337 ನೇದರಲ್ಲಿ ತಾರೀಖು 30 ನೇ ತಿಂಗಳ ಸನ್ ೧೯೪೬ನೇ

ಇಸವಿಯ ಹುಕುಮು ಸಾಮುದು ಮೇಲೆ ಸದರೀ ಅಪೀಲು ದಾಖಲ ಮಾಡೋಣದರಲ್ಲಿ ಬಂದಿರುತ್ತದೆ.

ಮೇಲೆ ಹೇಳಿದ ಅಪೆಲ್ಲಂಟು ಇವನು

ಸದ್ರಿ ತಾರೀಖಿನ ಹುಕುಮು ಸಾಮುದು ಮೇಲೆ ಧಾರವಾಡ ಇಲ್ಲಿಯ ಡಿಸ್ಟ್ರಿಕ್ಟ್ ಕೋರ್ಟಿಗೆ ಅಪೀಲು ಮಾಡಿರುತ್ತಾನೆ.

ಈ ಅಪೀಲು ಸನ್ ೧೯೪೬ ಜನೇರಿ ತಿಂಗಳನ 13 ತಾರೀಖಿನ ದಿವಸ R.D. ಸಾಧಲ್ಕರ್ ಸಾಹೇಬ್ ಮುಂದೆ, ಅಪೀಲೆಂಟಿನ ತರ್ಫಿನಿಂದ ಮಿ. R.V. ಕಾರ Asst Govt Pleader ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ ರಿಸ್ಪಾಂಡೆಂಟನ ತರ್ಫಿನಿಂದ ——— ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ ಸುನಾವಣಿಯ ಬಗ್ಗೆ ಬಂದದ್ದರ ಮೇಲಿಂದ ಹೀಗೆ ಹುಕುಮು ಮಾಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ—

ನಿವಿಧಾ ಅಪೀಲು ನಂಬರ 311/46 ನೆಚ್ಚಿನ ಮುಂಬಯಿ ಪ್ರಾಂತ ಮಾಡಿಕೆ ಕೊಟ್ಟಿರುವ ಮೂಲ ದಾವೆಯಾದ ದಾವೆಯನ್ನು ಕಾಲಕ್ಕ ಕಿಡ್ಡಿರುವುದರ ಮುಖ್ಯ ಮೊದಲಾಗಿ ಕಾಲ ತನಕ ದಾವೆಯನ್ನು ಹಿಡುಗಿ ಕಾಲಕ್ಕ ಕಿಡ್ಡಿರುವುದರ ಮುಖ್ಯ ಮೊದಲಾಗಿ ಕಾಲ ತನಕ ದಾವೆಯನ್ನು ಹಿಡುಗಿ ಕಾಲಕ್ಕ ಕಿಡ್ಡಿರುವುದರ ಮುಖ್ಯ ಮೊದಲಾಗಿ ಕಾಲ ತನಕ ದಾವೆಯನ್ನು ಹಿಡುಗಿ ಕಾಲಕ್ಕ ಕಿಡ್ಡಿರುವುದರ ಮುಖ್ಯ ಮೊದಲಾಗಿ ಕಾಲ ತನಕ ದಾವೆಯನ್ನು ಹಿಡುಗಿ ಕಾಲಕ್ಕ ಕಿಡ್ಡಿರುವುದರ ಮುಖ್ಯ ಮೊದಲಾಗಿ ಕಾಲ ತನಕ ದಾವೆಯನ್ನು ಹಿಡುಗಿ

ಈ ಕೆಳಗೆ ವಿವರಿಸಿದಂತೆ ಈ ಅಪೀಲಿಗೆ ಆದ ವೆಚ್ಚವನ್ನು ಎಂದರೆ, ಒಟ್ಟಿಗೆ

ರೂಪಾಯಿಗಳನ್ನು ಕೊಡಬೇಕು; ಮತ್ತು ವಗಾಲ ದಾವೆಯ ವೆಚ್ಚವನ್ನು

ಕೊಡಬೇಕು.

ಅಪೀಲಿನ ವೆಚ್ಚವು

ಅಪೀಲೆಂಟ.	ರಕಮು.			ರಿಸ್ಪಾಂಡೆಂಟ.	ರಕಮು.		
	ರೂ.	ಆ.	ಪೈ.		ರೂ.	ಆ.	ಪೈ.
೧. ಅಪೀಲಿನ ಮೆಮೊರಾಂಡಮ್ ಬಗ್ಗೆ ಸ್ಟಾಂಪು....				೧. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸ್ಟಾಂಪು....			
೨. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸದರ				೨. ಅರ್ಜಿಯ ಬಗ್ಗೆ ಸದರ			
೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ....				೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ			
೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣೆ				೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣೆ			
೫. ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ				೫. ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ			
೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ				೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ			
೭. ಉಲಟ ಹರಕತಿಯು ಮೇಲೆ ಫೀ				೭. ಹರಕತ ಅರ್ಜಿಗೆ ಸ್ಟಾಂಪು			
				೮. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ			
				ಒಟ್ಟು....			

ಈ ಹೊತ್ತು ತಾರೀಖು 13 ತಿಂಗಳು ಸನ್ ೧೯೪೫ನೇ ಇಸವಿಯ ದಿನ

ನಮ್ಮ ಸಹಿ ಮಾಡಿ ಮತ್ತು ಕೋರ್ಟಿನ ಮೊಹರು ಮಾಡಿ ಕೊಡಲ್ಪಟ್ಟಿತು.

ತಪಾಸು ಮಾಡಿ ನೋಡಿತು, ಸಮನಾಗಿ ಆದೆ.

Sd/- R.D Shirol

ಕಾರಕೂನೆ.

ಜಜ್ಜ.

ಅಪೀಲೆಂಟ ವಕೀಲ.

ರಿಸ್ಪಾಂಡೆಂಟ ವಕೀಲ.

[ಈ ಮೊಕದಮೆಯಲ್ಲಿಯ ಪಕ್ಷಕಾರರಿಗೆ ಹೀಗೆ ಸೂಚನೆ ಕೊಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ, ಅವರು ತಾವು ಹಾಜರು ಮಾಡಿದ ಯಾವದಾದರೂ ದಸ್ತೈವಜುಗಳನ್ನು ಅವರು (ತಿರುಗಿ) ತೆಗೆದುಕೊಂಡು ಹೋಗದಿದ್ದರೆ ಆ ದಸ್ತೈವಜುಗಳು ಅಪೀಲು ಮಾಡಿದ್ದರೆ, ಆ ಅಪೀಲು ನಿಕಾಲೆಯಾದ ಮೇಲೆ, ನಾಶ ಮಾಡುವದಕ್ಕೆ ಪಾತ್ರವಾಗುವವು (ಅಂದರೆ ಅವು ನಾಶ ಮಾಡುವದರಲ್ಲಿ ಬರುವವು.)]

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Registered on 19-11-1946.

Decided on 23-7-1948.

Duration - 1 year, 8 months and 19 days.

In the Court of the District Judge, Dharwar.

At Dharwar.

Appeal No.324 of 1946 from Decree in Civil Suit No.337 of 1944 of the Court of the Civil Judge Senior Division, Dharwar-(Mr.B.A.Chougule)

Pleaders

Mr.A.S.Patil.

Dyavangouda Basangouda Mallangoudar of Mugnur Petha Nargund. ... Appellant (Original Deft No.2).

against.

Mr.Jamkhandi.

1. Hanmantgouda Ayyangouda Hiregoudar of Mugnur Petha Nargund.

Mr.Dixit for Nos 2 and 3.

2. Ramangouda Karigouda Hiregoudar of Do.

3. Tayawwa kom Hanmantgouda Sannamani of Do.

Mr.R.V.Jathar (Government pleader).

4. The Provincial Government of Bombay.

... Respondants. (Original Deft No.1). (Original pltfs Nos. 1,3 and 4)

Claim Rs.

Judgement.

For the reasons stated in the judgement in C.A. No.312 of 1946, I pass the following order.

Order

Appeal No.324 of 1946 is allowed. The decree

of the lower court is set aside and the suit is dismissed with costs throughout.

23rd July 1948. Sd/- R.D.Shinde,
District Judge.

Grounds of appeal.

1. That the decree of the lower court is contrary to law, evidence and equity.

2. That the lower Court ought to have held that the Benni-nalla suddenly changed its course about 12 years ago and that the suit land is the abandoned bed of Benninalla.

3. That the lower court ought to have relied upon the evidence adduced by the defendants that Benninalla deflected from its old bed suddenly in 1934 on account of flood of Benninalla due to heavy rains.

4. That the lower Court ought to have held tha the plffs have failed to prove that the suit land is alluvial accretion to S.No.4 belonging to respondents 1,2,3 and others.

5. That the lower Court ought to held that respondent No.4 i.e. the Provincial Government had become the owner of suit land which was clearly abandoned Nalla bed of ~~xxx~~ Benninalla.

6. That the lower Court ought to have held tha section 63 and 64 of L.R.C. do not apply to the~~x~~ facts of th case.

7. That lower Court has wrongly construed the order dated 3-12-1941 of the Collector directing the assistant Collector to make enquiry whether the suit land is alluvial accretion and has also wrongly relied upon some observations made prior to enquiry made by the Assistant Collector in that order, and to support the contention of the plffs that the suit land is alluvial accretion, which

the same Collector who directed thorough enquiry by the Assistant Collector has ultimately held that the suit land is the abandoned bed of the nalla.

8. That the lower Court ought to have relied upon the evidence of the appellant that entire area of S.No.3 was in possession and wahivat of appellant along with other co-sharers.

9. That the loer Court has wrongly held that portion of S.No.3 remained fallow on account of washing away of the same, by Benninalla in as much as the said portion of S.No.3 remained fallow on account of washing away of crops by the flood water of Yalavihall which joins Bennihalla to the west of Benninalla just at the end of S.No.3

10. That the lower Court has wrongly construed Exs.46,66, 67 and 79.

11. That the lower Court has wrongly thrown the burden on the defts to prove that the suit land is abandoned nalla bed.

12. The trial Court has ignored that the S.No.3 was almost fully covered with crops in 1929 and even after that year. This is a sure indication that the sudden change is only about 12 years old.

13. The trial Court has ignored the physical conditions such as the cluster of grown uptrees and at the corner of the new and the old bed and the force of the water of the Yalavinalla and the low level of the site of the old bed.

14. The trial Court erred in saying that the rent of S.No.3 decreased year after year.

15. The admission of defendant No.3 is not given its full evidentiary value.

16. The trial Court erred in not treating the entire area as one.

17. The trial Court has given undue importance to the possession of the plff though it was only for few years before the order of the Collector.

18. At any rate the trial Court should have held that the defendant No.3 would not get possession of pot No.2 in the suit land which belongs to deft 2 solely by reason of his admission. The trial Court has ignored the fact that he remained absent at the trial.

19. The trial Court should have held that the plff's suit was barred by time.

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2920—10,000—6-47—R(a)

CA 324/46 with CA 312/46 and CA 31/46

Civ. A 494

ಅಪೀಲಿನೊಳಗಿನ ಹುಕುಮುನಾಮೆಯು (ಆರ್ಡರ ೪೧, ರೂ. ೪೫).

(ಫಾರ್ಮ ನಂಬರು ೯, ಪರಿಶಿಷ್ಟ ಗ, ಶೆಡ್ಯೂಲ ೧)

ಹುಕುಮನಾಮೆಯು

ಧಾರವಾಡ ಇಲ್ಲಿಯ ಡಿಸ್ಟ್ರಿಕ್ಟ ಜಜ್ಜ ಕೋರ್ಟನಲ್ಲಿ.

ಮುಕ್ಕಾಮು ಧಾರವಾಡ ಇಲ್ಲಿ. ನಿ॥ ೧೫

ಅಪೀಲ ಮೊಕದಮೆ ನಂಬರು 324 ಸನ್ ೧೯೪೬ ನೇ ಸ್ಪೈತೆ

(೧) ಪಿರಿಯನ ನಾಯಕಾ ಬಿನಸಗ ವಕ್ಕಾ ಮುಲ್ಲನ ಸವದರ
ಸಾ॥ ಮುಂಗನವಾಡ ಪೇಕ್ಷಾ ನರಗುಂದ

} ಅಪೀಲೆಂಟ (ಮೊದಲನೇ) ಫಿರ್ಯಾದಿ

ವಿರುದ್ಧ

(೪) ಮುಂಬಯಿ ಸರಕಾರ ದ್ವಾರಾ ಕಲೆಕ್ಟರ

} ರಿಸ್ಪಾಂಡೆಂಟ (ಮೊದಲನೇ)).

ಧಾರವಾಡ ಇಲ್ಲಿಯ ಸಿವಿಲ್ ಜಜ್ಜ ಸೀನಿಯರ್ ಡಿವಿಜನ್ ಕೋರ್ಟನ ಸನ್ ೧೯೪೫ ನೇ.
ಇಸವಿಯ ನಂಬರು 332 ನೇದರಲ್ಲಿ ತಾರೀಖು 29 ನೇ ನವೆಂಬರ ತಿಂಗಳ ಸನ್ ೧೯೪೬ ನೇ
ಇಸವಿಯ ಹುಕುಮು ನಾಮಂಜೂರ ನೇಲೆ ಸದರೀ ಅಪೀಲು ದಾಖಲ ಮಾಡೋಣವರಲ್ಲಿ ಬಂದಿರುತ್ತದೆ.
ಮೇಲೆ ಹೇಳಿದ ಅಪೆಲೆಂಟ ಇವನು
ಕೆಳಗಿನ ತಾರೀಖಿನ ಹುಕುಮು ನಾಮಂಜೂರ ಮೇಲೆ ಧಾರವಾಡ ಇಲ್ಲಿಯ
ಡಿಸ್ಟ್ರಿಕ್ಟ ಜಜ್ಜ ಕೋರ್ಟಗೆ ಅಪೀಲು ಮಾಡಿರುತ್ತಾನೆ.
ಈ ಅಪೀಲು ಸನ್ ೧೯೪೬ ನೇ ಇಸವಿಯ ನವೆಂಬರ ತಿಂಗಳಿನ 29 ತಾರೀಖಿನ ದಿವಸ R.D. Shinde ಜಜ್ಜ
ಮುಂದೆ, ಅಪೀಲೆಂಟನ ತರ್ಫಿನಿಂದ A.S. ವಕೀಲರು ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ
ಕನೆ ರಿಸ್ಪಾಂಡೆಂಟನ ತರ್ಫಿನಿಂದ ಮಿ॥ ಬಿ.ಕಾರ A.G.P. ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ
ಸುನಾವಣಿಯ ಬಗ್ಗೆ ಬಂದಪ್ಪರ ಮೇಲಿಂದ ಹೀಗೆ ಹುಕುಮು ಮಾಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ—

ಅಪೀಲು ನಂ. 324 ಸನ್ ೧೯೪೬ ಮುಂದಿನ ಮಾಡಿ
ರುವ ಅಪೀಲು ಕೋರ್ಟಿನ ದಾಖಲೆಯಾಗಿರುವ ಕಾಗದ ಪತ್ರಗಳನ್ನು ಮುಂದಿಟ್ಟು ಕೊಂಡು ಅಪೀಲು ದಾಖಲೆಯನ್ನು ಮುಂದಿಟ್ಟು ಕೊಂಡು ಸರಕಾರ ಕಡೆಯವರ ವಕೀಲರ ಹಿಕ್ಕತ್ತಿನ ಮೇಲಿ ಹಾಕಿಕೊಂಡು

ಈ ಕೆಳಗೆ ವಿವರಿಸಿದಂತೆ ಈ ಅಪೀಲಿಗೆ ಆದ ವೆಚ್ಚವನ್ನು ಎಂದರೆ, ಒಟ್ಟಿಗೆ ———— ರೂಪಾಯಿಗಳನ್ನು ———— ಕೊಡಬೇಕು; ಮತ್ತು ಮೂಲ ದಾವೆಯ ವೆಚ್ಚವನ್ನು ———— ಕೊಡಬೇಕು.

ಅಪೀಲಿನ ವೆಚ್ಚವು

ಅಪೀಲೆಂಟ.	ರಕಮು. ರೂ.	ಆ.	ಪೈ	ರಿಸ್ಪಾಂಡೆಂಟ.	ರಕಮು. ರೂ.	ಆ.	ಪೈ
೧. ಅಪೀಲಿನ ಯಾದಿಯ ಬಗ್ಗೆ ಸ್ಟಾಂಪು....				೧. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸ್ಟಾಂಪು....			
೨. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸದರ				೨. ಅರ್ಜಿಯ ಬಗ್ಗೆ ಸದರ			
೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ....				೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ			
೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣೆ				೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣೆ			
೫. ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ				೫. ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ			
೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ				೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ			
೭. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ				೭. ಹರಕತ ಅರ್ಜಿಗೆ ಸ್ಟಾಂಪು			
				೮. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ			
				ಒಟ್ಟು....			

ಈ ಹೊತ್ತು ತಾರೀಖು 13 ತಿಂಗಳು ———— ಸನ್ ೧೯೪೪ ನೇ ಇಸವಿಯ ದಿನ ನಮ್ಮ ಸಹಿ ಮಾಡಿ ಮತ್ತು ಕೋರ್ಟಿನ ಮೊಹರು ಮಾಡಿ ಕೊಡಲ್ಪಟ್ಟಿತು.

ತಪಾಸು ಮಾಡಿ ನೋಡಿತು, ಸಮನಾಗಿ ಅದೆ.

Sd/- V M Keluputre,

ಕಾರಕೂನ. (Seal)

Sd/- R D Shinde

District ಜಜ್ಜ.

ಅಪೀಲೆಂಟ ವಕೀಲ.

Sd/- R V Jalikop

ರಿಸ್ಪಾಂಡೆಂಟ ವಕೀಲ. Advt.

[ಈ ಮೊಕದಮೆಯಲ್ಲಿಯ ಪಕ್ಷಕಾರರಿಗೆ ಹೀಗೆ ಸೂಚನೆ ಕೊಡುವದರಲ್ಲಿ ಬರುತ್ತದೆಲ್ಲ, ಅವರು ತಾವು ಹಾಜರು ಮಾಡಿದ ಯಾವದಾದರೂ ದಸ್ತೈವಜುಗಳನ್ನು ಅವರು (ಅರುಗಿ) ತೆಗೆದುಕೊಂಡು ಹೋಗದಿದ್ದರೆ ಆ ದಸ್ತೈವಜುಗಳು ಅಪೀಲು ಮಾಡಿದ್ದರೆ, ಆ ಅಪೀಲು ನಿಕಾಲಿಯಾದ ಮೇಲೆ, ನಾಶ ಮಾಡುವದಕ್ಕೆ ಪಾತ್ರವಾಗುವವು (ಅಂದರೆ ಅವು ನಾಶ ಮಾಡುವದರಲ್ಲಿ ಬರುವವು.)]

Amended as per Dy. No. 122/44 Sd- R.D. 9-7-44 BY.

True Copy
Sd/- R M Joshi
Clerk of the Court

63

Copy was applied for in person on Twenty-Seventh July 1 48.

Sd/ S.B.Kadkol,
Record Keeper.

7th and 9 Holidays

8th is Sunday.

Copy was ready on Tenth August 1948.

Sd/- S.B.Kadkol,
Record Keeper.

Copy was delivered on Thirteenth August 48

Sd/- S.B.Kadkol,
Record Keeper.

300

-/ 9/- Copying
-/ 2/- Surcharge
-/ 2/- Comparing.
-/ 1/- Surcharge.
-/ 1/- Paper.

Received on 19-11-1946.

Registered on 21-12-1946.

Decided on 23-7-1948.

Duration - 1 year 8 months and 4 days.

In the District Court of Dharwar.

At Dharwar. Ex.16.

Appeal No.385 of 1946 from Decree in Civil Suit No.337 of 1944 of the Court of the Civil Judge Senior Division of Dharwar (Mr.B.A.Chougule).

Pleaders.

Mr. Dixit.

1. Fakkirgouda Sanna-Shivangouda Hiregoudar of Mugnur Petha Nargund.
2. Karigouda Fakkirgouda Hiregoudar of Do.

... Appellants (original plffs 2 & 5.

against.

Mr.R.V.Jathar (Government Pleader).

1. The Provincial Government of Bombay.
2. Demangouda Basangouda Mallappagoudar of Mugnur Petha Nargund.
3. Yellappagouda Ningangouda Hiregoudar of Do.

... Respondents (Original defts).

Claim Rs.217/- for both.

Judgement.

For the reasons stated in the judgement in C.A. No.312 of 1946, I pass the following order.

Order.

C.A.No.385 of 1946 is dismissed with costs

Sd/- R.D.Shinde,
23rd July 1948. District Judge.

Grounds of appeal.

1. The decree and judgement of the lower Court are contrary to law and evidence in the case.

2. The lower Court ought to have held that the terms and conditions of the offer made by the Government were not made in accordance with law as required by the provisions of the Land Revenue Code.

3. The lower Court ought to have held that the refusal was the refusal ofthe offer on the specific conditions.

4. The lower Court ought to have held that there was no offer as required by law.

5. The lower Court is wrong in holding that it was a refusal as contemplated by the section.

6. The lower Court is wrong in holding that these appellants were not entitled to 2 acres and 14 gunthas of the land.

7. The lower is wrong in holding these appellants were not entitled to get possession of a adjoining strips of S.No.4/6 and 4/7.

Typed by Read by
Sd/- x x Sd/- x x

"True Copy"
Sd/- B.A.Joshi.
Clerk of the Court.

Compared by
Sd/- x x

Seal.

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65

920—10,000—6-47—R(a)*

Civ. A 42 k.

ಅಪೀಲಿನೊಳಗಿನ ಹುಕುಮನಾಮೆಯು ಆರ್ಡರ ೪೧, ರೂ. ೪೫).

(ಫಾರ್ಮ ನಂಬರು ೯, ವಿಶೇಷ ಗ, ಶೆಡ್ಯೂಲ ಂ)*

CA 345/46 with CA 312/46 and CA 324/46

ಧಾರವಾಡ ಇಲ್ಲಿಯ ಡಿಸ್ಟ್ರಿಕ್ಟ್ ಜಜ್ಜ ಕೋರ್ಟನಲ್ಲಿ.

ಮುಕ್ಕಾಮು ಧಾರವಾಡ ಜಿಲ್ಲೆ. ನಂ. 12

ಅಪೀಲ ಮೊಕದಮೆ ನಂಬರು 345 ಗಳ 6 ನೇ ಸ್ಪೆಕೆ

(೧) ಫಕೀರಗವ್ವಾ ಸಿದ್ಧಲಿಂಗಯ್ಯ ಹಿರೇಮಠ ತಾ. ಕುಂದಗೋಳ ಮೈಲಾರಪ್ಪ ಬಸಪ್ಪ ಕಲ್ಲಾನವರ ವಗೈರೆ ಅಪೀಲೆಂಟ (ಮೊದಲನೇ)

ವಿರುದ್ಧ

(೧) ಎಮ್ಮಾರುಮಿ ವೀರಭದ್ರ ವಗ್ಗೆರೆ ರಿಸ್ಪಾಂಡೆಂಟ (ಮೊದಲನೇ)

ಧಾರವಾಡ ಇಲ್ಲಿನ ಸೀನಿಯರ್ ಸಬ್-ಜಜ್ಜ ಕೋರ್ಟಿನ ಸನ್ ೧೯೪೫ ನೇ ಇಸವಿಯ ನಂಬರ್ 347 ನೇದರಲ್ಲಿ ತಾರೀಖು 30 ನೇ ಜೂನ ತಿಂಗಳ ಸನ್ ೧೯೪೬ ನೇ ಇಸವಿಯ ಹುಕುಮು ನಾಮೆಯ್ಯನ್ನು ಮೇಲೆ ಸದರೀ ಅಪೀಲು ದಾಖಲ ಮಾಡೋಣದರಲ್ಲಿ ಬಂದಿರುತ್ತದೆ.

ಮೇಲೆ ಹೇಳಿದ ಅ ಫಕೀರಗವ್ವಾ ಸಿದ್ಧಲಿಂಗಯ್ಯ ಹಿರೇಮಠ ತಾ. ಕುಂದಗೋಳ ಮೈಲಾರಪ್ಪ ಬಸಪ್ಪ ಕಲ್ಲಾನವರ ವಗೈರೆ ಇವನು ಸದರಿ ತಾರೀಖಿನ ಹುಕುಮು ನಾಮೆಯ್ಯ ಮೇಲೆ ಧಾರವಾಡ ಇಲ್ಲಿಯ ಡಿಸ್ಟ್ರಿಕ್ಟ್ ಜಜ್ಜ ಕೋರ್ಟಿಗೆ ಅಪೀಲು ಮಾಡಿರುತ್ತಾನೆ.

ಈ ಅಪೀಲು ಸನ್ ೧೯೪೭ ನೇ ಜನವರಿ ತಿಂಗಳಿನ 23 ತಾರೀಖಿನ ದಿವಸ R D Shinde ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯು ಮುಂದೆ, ಅಪೀಲೆಂಟನ ತರ್ಫಿನಿಂದ ಶ್ರೀ ಡಿ ಕೆ ಕುಲಕರ್ಣಿ ವಕೀಲ ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ ರಿಸ್ಪಾಂಡೆಂಟನ ತರ್ಫಿನಿಂದ ಶ್ರೀ ಬಿ ಎಸ್ ಕಾಮತ ಬಿ.ಎ.ಎಲ್.ಬಿ. ವಕೀಲ ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ ಸುನಾವಣಿಯ ಬಗ್ಗೆ ಬಂದದ್ದರ ಮೇಲಿಂದ ಹೀಗೆ ಹುಕುಮು ಮಾಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲಿ—

ಸಿವಿಲ್ ಅಪೀಲ ನಂಬರ 345 ಮತ್ತು ಕಾಕೆದಿ

Amended as per Diary No. 123 Sdl- R D Shinde Dy. 9-1-47

ಈ ಕೆಳಗೆ ವಿವರಿಸಿದಂತೆ ಈ ಅಪೀಲಿಗೆ ಆದ ವೆಚ್ಚವನ್ನು ಎಂದರೆ, ಒಟ್ಟಿಗೆ ೧೫೨-೧೦-೬

ರೂಪಾಯಿಗಳನ್ನು ಎಂಟುಕೊಟ್ಟು ನಮ್ಮ

ಎದುರಾಳಿಯವರು ಕೊಡಬೇಕು; ~~ಅದನ್ನು ಹೇಗೆ ಹೆಚ್ಚಿಸಬೇಕು ಎಂಬುದನ್ನು~~

(೧೫೨

Amended as per Dy No. ೧೨೫೫ dt 8/7

೧೨-೭-೪೯

~~ತೀರ್ಮಾನಿಸಬೇಕು.~~

ಅಪೀಲಿನ ವೆಚ್ಚವು

ಅಪೀಲೆಂಟ.	ರಕಮು.			ರಿಸ್ಪಾಂಡೆಂಟ.	ರಕಮು.		
	ರೂ.	ಆ.	ಪೈ		ರೂ.	ಆ.	ಪೈ
೧. ಅಪೀಲಿನ ಯಾದಿಯ ಬಗ್ಗೆ ಸ್ಟಾಂಪು....	೨೦	೦	೦	೧. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸ್ಟಾಂಪು....			
೨. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸದರ				೨. ಆರ್ಜಿಯ ಬಗ್ಗೆ ಸದರ		೧೦	೦
೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ....	೧	೪	೦	೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ			
೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜ್ಜಾವಣೆ				೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣೆ			
೫. ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ	೧೨೫	೦	೦	೫. ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ	೧೨೫	೦	೦
೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ	೧೫	೦	೦	೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ			
೭. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ	೨೦	೦	೦	೭. ಹರಕತ ಅರ್ಜಿಗೆ ಸ್ಟಾಂಪು			
				೮. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ			
ಕಾಯಿದಾ ಸ್ಟಾಂಪು	೧೨	೦	೦				
ಒಟ್ಟು....	೧೭೨	೪	೦	ಒಟ್ಟು....	೧೨೫	೧೦	೦

ಈ ಹೊತ್ತು ತಾರೀಖು ೨೩ ತಿಂಗಳು ೨೫ ಸನ್ ೧೯೪೯ನೇ ಇಸವಿಯ ದಿನ

ನಮ್ಮ ಸಹಿ ಮಾಡಿ ಮತ್ತು ಕೋರ್ಟಿನ ಮೊಹರು ಮಾಡಿ ಕೊಡಲ್ಪಟ್ಟಿತು.

ತಪಾಸು ಮಾಡಿ ನೋಡಿತು, ಸಮನಾಗಿ ಅದೆ.

Sd/- V M Ashtaputre
ಕಾರಕೂನ.

(Seal)

Sd/- RD Shirol
31-7-49
ಜಡ್ಜ.
Sd/- R V Salimath

ಅಪೀಲೆಂಟ ವಕೀಲ.

ರಿಸ್ಪಾಂಡೆಂಟ ವಕೀಲ.

[ಈ ಮೊಕದಮೆಯಲ್ಲಿಯ ಪಕ್ಷಕಾರರಿಗೆ ಹೀಗೆ ಸೂಚನೆ ಕೊಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ, ಅವರು ತಾವು ಹಾಜರು ಮಾಡಿದ ಯಾವದಾದರೂ ದಸ್ತೈವಜುಗಳನ್ನು ಅವರು (ತಿರುಗಿ) ತೆಗೆದುಕೊಂಡು ಹೋಗದಿದ್ದರೆ ಆ ದಸ್ತೈವಜುಗಳು ಅಪೀಲು ಮಾಡಿದ್ದರೆ, ಆ ಅಪೀಲು ನಿಕಾಲಿಯಾದ ಮೇಲೆ, ನಾಶ ಮಾಡುವದಕ್ಕೆ ಪಾತ್ರವಾಗುವವು (ಅಂದರೆ ಅವು ನಾಶ ಮಾಡುವದರಲ್ಲಿ ಬರುವವು.)]

True Copy
Sd/- [illegible]
Clerk of the Court

Suits

Dharwar.

For a declaration of the plaintiffs' title to a piece of land admeasuring 5 acres 17 gunthas newly formed out of the bed of a rivulet called Benni Nalla and lying between Revision Survey Nos. 3 and 4 of the village of Mugnur.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 9822

Bombay Castle, 30th August 1949.

Read Government Resolutions, Legal Department Nos. 7212 dated the 21st October 1946, 3529 dated the 11th April 1947 and 5858 dated the 4th June 1947.

Letter from the Assistant Government Pleader, Dharwar, No.884 dated the 21st August 1948 stating that Civil appeals No.312 of 1946 filed by the defendant No.1, Civil Appeal No.385 of 1946 filed by the plaintiff No.2 and another and Civil Appeal No.324 of 1946 filed by defendant No.2 in the suit noted in the margin were decided by the District Judge, Dharwar on 23rd July 1948 when the following order was passed :-

In the Court of the Civil Judge (Senior Division), Dharwar.
Civil Suit No.337 of 1944
Hanamantgouda Ayyangouda Hiregoudra and 5 others. ... Plaintiffs;
versus
The Province of Bombay..Defendant.
Claim Rs.

"Civil Appeal No.312 of 1946 is allowed. The decree of the Lower Court is set aside and the suit is dismissed with costs throughout."

Letter from the District Government Pleader, Dharwar, No.682 dated the 6th August 1949- Forwarding uncertified copies of Judgments and decrees.

Resolution :- The result of the appeals is recorded.

By order of the Governor of Bombay,

R. M. Mehta.
Assistant Secretary to Government.

To

The Revenue Department,
The Commissioner Southern Division,
The Collector of Dharwar,
The Secretary, Bombay Revenue Tribunal.